

## **Exhibit 7**

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 IN RE: )  
RESIDENTIAL CAPITAL, LLC, ) Civil Action No.  
5 et al., ) 12-12020 (MG)  
Debtors, )  
6 )  
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12 CONFIDENTIAL DEPOSITION OF JEFFREY A. LIPPS

13 New York, New York

14 Tuesday, July 23, 2013  
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23

24 Reported by:  
JOMANNA DeROSA, CSR  
25 JOB NO. 64088

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July 23, 2013  
10:00 a.m.

Confidential Deposition of  
JEFFREY LIPPS, held at the offices  
of McKool Smith, One Bryant Park,  
New York, New York, before Jomanna  
DeRosa, a Certified Shorthand Reporter  
and Notary Public of the States of  
New York, New Jersey, California  
and Arizona.

APPEARANCES:

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BY: MICHAEL WEITMAN, ESQ.  
(via telephone)

J. LIPPS - CONFIDENTIAL

JEFFREY LIPPS, called as a witness,  
having been duly sworn by a Notary  
Public, was examined and testified as  
follows:

EXAMINATION BY  
MS. JAMES:

Q. Mr. Lipps, my name is Emma James  
from the law firm Willkie Farr & Gallagher, and  
I'm here today representing Monarch, Stonehill,  
CQS, and Bayview, some of the parties objecting to  
Debtors' 9019 motion regarding the Settlement  
Agreement with FGIC.

Are you okay today if I refer to  
that agreement as the FGIC Settlement Agreement?

A. Certainly.

MS. JAMES: Before we start,  
perhaps counsel could introduce themselves,  
counsel in the room.

MR. KERR: Charles Kerr, Morrison &  
Foerster, on behalf of the Debtors and the  
witness.

MR. KAUFMAN: Philip Kaufman,  
Kramer Levin, on behalf of the Creditors  
Committee.

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 MR. THAYER: Michael Thayer, Jones</p> <p>3 Day, on behalf of Financial Guaranty Insurance</p> <p>4 Company.</p> <p>5 MR. DEVORE: Andrew Devore of Ropes</p> <p>6 &amp; Gray, Steering Committee of RMBS Investors.</p> <p>7 MR. BECK: David Beck on behalf of</p> <p>8 the Debtors.</p> <p>9 MR. BAEHR: Robert Baehr of</p> <p>10 Morrison &amp; Foerster, on behalf of the Debtors.</p> <p>11 MR. SHORE: Chris Shore from White</p> <p>12 &amp; Case, on behalf of the Ad Hoc Group of</p> <p>13 Junior Secured Noteholders.</p> <p>14 MS. SODERBERG: Vanessa Soderberg</p> <p>15 from White &amp; Case on behalf of the Junior</p> <p>16 Secured Noteholders.</p> <p>17 MR. HAO: William Hao, Alston &amp;</p> <p>18 Bird, on behalf of Wells Fargo Bank.</p> <p>19 MS. HANAMIRIAN: Jocelyn</p> <p>20 Hanamirian, Deckert, LLP, representing Bank of</p> <p>21 New York Mellon.</p> <p>22 MR. CARNEY: Michael Carney. I'm</p> <p>23 from McKool Smith on behalf of Freddie Mac.</p> <p>24 MS. WILLIAMS: Pia Williams,</p> <p>25 Willkie Farr &amp; Gallagher, on behalf of</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Monarch, Stonehill, Bayview, and CQS.</p> <p>3 Q. Mr. Lipps, do you understand that</p> <p>4 your Declaration that was filed with the Court in</p> <p>5 connection with Debtors 9019 motion pursuant to</p> <p>6 Federal Rules of Bankruptcy Procedure 9019 for</p> <p>7 approval of the Settlement Agreement among the</p> <p>8 Debtors FGIC, the FGIC trustees, and certain</p> <p>9 institutional investors has been resubmitted by</p> <p>10 Debtors in connection with my clients' objections</p> <p>11 to the 9019 motion?</p> <p>12 A. Are you just asking me if I filed a</p> <p>13 Declaration?</p> <p>14 Q. I'm asking if you understand that</p> <p>15 that Declaration has been submitted as an Expert</p> <p>16 Declaration in connection with the objections to</p> <p>17 the 9019 motion?</p> <p>18 A. I understand my Declaration has</p> <p>19 been filed in connection with the 9019.</p> <p>20 Q. And, Mr. Lipps, can you tell us</p> <p>21 what your expert qualifications are?</p> <p>22 A. Well, I think I've set forth in the</p> <p>23 Declaration my experiences. For purposes of the</p> <p>24 opinions that I'm offering here, I think my</p> <p>25 qualifications are based on my experience as a</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 commercial litigator for now 32 years. The last</p> <p>3 three years of which -- or I guess two years</p> <p>4 before the filing of the bankruptcy and the year</p> <p>5 after I have been actively involved with respect</p> <p>6 to RMBS securitizations, and rep and warranty</p> <p>7 claims, as well as PLS claims. So, I have had</p> <p>8 substantial experience in the area.</p> <p>9 And as part of my ongoing</p> <p>10 assistance with the Debtors' counsel, I continue</p> <p>11 to stay abreast of what is developing in the law</p> <p>12 with respect to the legal issues, and I have</p> <p>13 direct experience in terms of representing the</p> <p>14 Debtors and some of the non-Debtors pre-petition</p> <p>15 in these cases, and have a very good understanding</p> <p>16 of what the complexities are in terms of the</p> <p>17 discovery that will be encountered, as well as the</p> <p>18 legal issues that you have to confront in these</p> <p>19 kinds of claims.</p> <p>20 Q. So, is it fair that you have</p> <p>21 submitted a Declaration as an expert in the</p> <p>22 litigation of complex commercial disputes with</p> <p>23 specific subject matter expertise in the body of</p> <p>24 law that is developed in disputes regarding the</p> <p>25 sale of residential mortgage-backed securities or</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 RMBS?</p> <p>3 A. It sounds like you're reading that</p> <p>4 from the Declaration. That certainly is -- if</p> <p>5 that's what you've read from it, that is exactly</p> <p>6 what I said. That's what I tried to articulate in</p> <p>7 terms of my qualifications earlier.</p> <p>8 Q. And other than your experience that</p> <p>9 you've just summarized as a lawyer of 32 years,</p> <p>10 litigating complex commercial disputes, and your</p> <p>11 three years of experience with RMBS claims, are</p> <p>12 there any other bases upon which you are holding</p> <p>13 yourself out as an expert in this matter?</p> <p>14 A. I guess the only other bases, and</p> <p>15 it's embedded within the three years of</p> <p>16 experience, as I do understand the Debtors. I</p> <p>17 understand their processes and procedures, not</p> <p>18 only in defending them, but also in assisting</p> <p>19 counsel.</p> <p>20 So, I have some unique perspectives</p> <p>21 on the processes, procedures, types of witnesses</p> <p>22 that would be involved in these RMBS claims, were</p> <p>23 they to be litigated, and I could take that</p> <p>24 experience and be able to look at other cases and</p> <p>25 see whether there are paths that you can get</p>

<p style="text-align: right;">Page 10</p> <p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 around the cases or put yourself in the case, if</p> <p>3 you want to do it. So, you know, I've got to</p> <p>4 emphasize that I have what I consider to be some</p> <p>5 unique specific factual knowledge, that it would</p> <p>6 take years of discovery and interviews and active</p> <p>7 involvement in litigation, I think, to replicate.</p> <p>8 Q. When were you first retained by</p> <p>9 Residential Capital, LLC or any of its affiliates</p> <p>10 as counsel?</p> <p>11 A. I believe that back in, I'm going</p> <p>12 to say the '90s, I did some work for RFC when they</p> <p>13 had their commercial mortgage unit, that I was</p> <p>14 engaged to represent them on some lender liability</p> <p>15 cases that they had and some legal disputes</p> <p>16 related to some portfolios that they had acquired.</p> <p>17 But that was the commercial</p> <p>18 division. And then I continued to represent them</p> <p>19 in that capacity up until they sold off that unit.</p> <p>20 I can't remember the exact year. It might have</p> <p>21 been 2004/2005.</p> <p>22 And then as far as representing</p> <p>23 Residential Capital, I believe that I was first</p> <p>24 retained in, say, March or April of 2010, and</p> <p>25 there were MBIA versus RFC was pending at the</p>	<p style="text-align: right;">Page 11</p> <p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 time. New Jersey Carpenters was pending at the</p> <p>3 time, and the MBIA/GMAC Mortgage case had just</p> <p>4 been filed. So, those were the three cases I</p> <p>5 started working on, one which was in the midst of</p> <p>6 discovery at that point.</p> <p>7 Q. So, for the period from 2004 or</p> <p>8 2005, when you said that the commercial unit --</p> <p>9 the commercial mortgage unit was sold, through</p> <p>10 2010, when you said you were retained by ResCap,</p> <p>11 did you do any work for Residential Capital or any</p> <p>12 of the Residential Capital affiliates?</p> <p>13 A. I guess I should probably take a</p> <p>14 step back because I've represented GM for many</p> <p>15 many, many years, and then I also represented</p> <p>16 GMAC, principally on its auto finance side,</p> <p>17 handling a lot of major cases for them. And then</p> <p>18 at some point in time, probably in the 2000s, my</p> <p>19 firm got retained to assist them in foreclosure</p> <p>20 actions where the borrowers asserted counterclaims</p> <p>21 or made direct challenges to the actual loan.</p> <p>22 So, we had represented them for a</p> <p>23 number of years, more on one-off type cases, and</p> <p>24 then at or about the time that I gotten engaged</p> <p>25 for RMBS litigation we also entered into a</p>
<p style="text-align: right;">Page 12</p> <p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 relationship with GMAC Mortgage, where we were</p> <p>3 defending all of their cases in Ohio that involved</p> <p>4 counterclaims and/or contested foreclosures.</p> <p>5 Q. I believe you stated earlier that</p> <p>6 when you were retained in connection with the</p> <p>7 MBIA, the RFC case, that discovery was ongoing?</p> <p>8 A. It just started.</p> <p>9 Q. It had just started?</p> <p>10 A. They had had document production.</p> <p>11 My firm replaced McGuire Woods, and there were a</p> <p>12 lot of very contentious disputes at the time with</p> <p>13 respect to the scope of document production. So,</p> <p>14 I jumped right in, battling on motions to compel</p> <p>15 and scheduling issues.</p> <p>16 But we didn't start depositions</p> <p>17 until -- the end of 2010 I think is when we first</p> <p>18 started, maybe the beginning of 2011.</p> <p>19 Q. Could you briefly describe your</p> <p>20 legal education -- educational background?</p> <p>21 A. I went to law school at University</p> <p>22 of Cincinnati in 1978, graduated in 1981. Do you</p> <p>23 want college?</p> <p>24 Q. I don't need college. What did you</p> <p>25 do after law school?</p>	<p style="text-align: right;">Page 13</p> <p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I joined a firm then called Frost &amp;</p> <p>3 Jacobs in Cincinnati, and did litigation for them</p> <p>4 for about six years, and then Jones Day extended</p> <p>5 me an offer to move from Cincinnati up to</p> <p>6 Columbus, and I began handling litigation in the</p> <p>7 Columbus office nationally for Jones Day until</p> <p>8 1994 when I left and started what's now Carpenter</p> <p>9 Lipps &amp; Leland.</p> <p>10 Q. And that's where you are currently?</p> <p>11 A. Correct.</p> <p>12 Q. And when was the first time, for</p> <p>13 any entity, that you were involved in an RMBS</p> <p>14 litigation?</p> <p>15 A. It would be in March or April of</p> <p>16 2010. I was hired to represent the RFC entity in</p> <p>17 the MBIA case, the GMAC Mortgage entity in the</p> <p>18 MBIA case, and then ResCap and the various</p> <p>19 affiliates involved in the securitizations at</p> <p>20 issue in the New Jersey Carpenters suit.</p> <p>21 MS. JAMES: I'm handing to the</p> <p>22 Court Reporter a document to mark as Exhibit</p> <p>23 1. And I'll state for the record that this</p> <p>24 document was filed in the bankruptcy case,</p> <p>25 Docket No. 3929-4, and it's captioned</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 "Declaration of Jeffrey A. Lipps In Support of</p> <p>3 Debtors' Motion Pursuant to Federal Rules of</p> <p>4 Bankruptcy Procedure 9019 for Approval of the</p> <p>5 Settlement Agreement Among the Debtors, FGIC,</p> <p>6 the FGIC Trustees, and Certain Institutional</p> <p>7 Investors."</p> <p>8 (Lipps Exhibit 1 marked for</p> <p>9 identification.)</p> <p>10 Q. Do you recognize this document as</p> <p>11 your Declaration?</p> <p>12 A. It is my Declaration.</p> <p>13 Q. Did you write this Declaration?</p> <p>14 A. I did.</p> <p>15 Q. And your electronic signature</p> <p>16 appears on page 54. Is that correct?</p> <p>17 A. This version does have an</p> <p>18 electronic signature. I think I probably had a</p> <p>19 wet signature on it that I did on the 7th of June,</p> <p>20 too.</p> <p>21 Q. And when did you begin drafting</p> <p>22 this Declaration, Mr. Lipps?</p> <p>23 A. This particular Declaration, I</p> <p>24 started working on it, I'm going to say, on May</p> <p>25 31st.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. And what caused you to begin</p> <p>3 drafting this Declaration on May 31st?</p> <p>4 A. I met with Debtors' counsel at</p> <p>5 Morrison &amp; Foerster, and they asked me if I would</p> <p>6 review the FGIC settlement and offer some opinions</p> <p>7 with respect to that settlement.</p> <p>8 Q. And was May 31st the first date you</p> <p>9 had been shown the FGIC Settlement Agreement?</p> <p>10 A. I believe that's right.</p> <p>11 Q. Okay. When did you first learn</p> <p>12 that a FGIC Settlement Agreement was being</p> <p>13 negotiated?</p> <p>14 A. I don't know that I could answer</p> <p>15 that because I don't know that I knew a FGIC</p> <p>16 Settlement Agreement was being negotiated until I</p> <p>17 was asked to come to New York, and have the</p> <p>18 meeting with Morrison &amp; Foerster to take on an</p> <p>19 evaluation of the Settlement Agreement.</p> <p>20 Q. And that meeting was on May 31st?</p> <p>21 A. That's what I best remember.</p> <p>22 Q. And what documents were provided to</p> <p>23 you in connection with your evaluation of the FGIC</p> <p>24 Settlement Agreement?</p> <p>25 MR. KERR: Objection. Are you</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 talking about that first meeting or overall?</p> <p>3 MS. JAMES: I guess I'm talking</p> <p>4 about the period from May 31 until this was</p> <p>5 filed on June 7, 2013.</p> <p>6 A. Well, as far as at the meeting</p> <p>7 itself, I was given the FGIC Settlement Agreement.</p> <p>8 You may or may not know that I had filed a</p> <p>9 Declaration -- I guess I filed a couple</p> <p>10 declarations during the course of the bankruptcy.</p> <p>11 So, I had many other documents that I've looked at</p> <p>12 over the time period since May 14th of 2012</p> <p>13 associated with RMBS litigation, private label</p> <p>14 securities litigation, and costs associated with</p> <p>15 that litigation.</p> <p>16 So, I had other declarations that I</p> <p>17 had that could form a backbone for this, and there</p> <p>18 were documents that were referenced in there. But</p> <p>19 as far as any specific document that I was given</p> <p>20 in connection with the FGIC settlement, it would</p> <p>21 have just been the Settlement Agreement.</p> <p>22 Q. What was the question or the</p> <p>23 assignment that Morrison &amp; Foerster asked you to</p> <p>24 address?</p> <p>25 A. Well, I think in my Declaration I</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 put forward the two issues. But what I was</p> <p>3 essentially asked to look at -- I mean, I am</p> <p>4 familiar with the array of factors that have to be</p> <p>5 evaluated with respect to the 9019, and I was</p> <p>6 being asked to provide my opinions with respect to</p> <p>7 the uncertainty and/or risk associated with</p> <p>8 prosecuting or defending the various claims that</p> <p>9 were being asserted initially by FGIC and the</p> <p>10 litigation that I was involved in representing the</p> <p>11 various Debtors on, as well as in the proofs of</p> <p>12 claim.</p> <p>13 And then I was also asked to offer</p> <p>14 my view on the complexity of defending and/or</p> <p>15 prosecuting these cases and the costs and burdens</p> <p>16 associated with such prosecution or defense.</p> <p>17 Q. And those opinions, is it fair to</p> <p>18 say they're summarized in the two bullet points in</p> <p>19 your Declaration, appearing on page 2?</p> <p>20 A. Correct. Under legal uncertainty</p> <p>21 and expensive resolution.</p> <p>22 Q. Okay. And referring to the legal</p> <p>23 uncertainty opinion, the first sentence there</p> <p>24 reads:</p> <p>25 "The liabilities to be released</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 under the Settlement Agreement relate to claims</p> <p>3 that pose unique legal and evidentiary challenges,</p> <p>4 many of which are not fully developed in a</p> <p>5 definitive way in the case law to date, and none</p> <p>6 of which has been litigated to resolution with</p> <p>7 respect to the Debtors specifically such that</p> <p>8 there is considerable uncertainty and risk in the</p> <p>9 outcome."</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. When you refer to the</p> <p>13 liabilities to be released, what are you referring</p> <p>14 to?</p> <p>15 A. I'm referring to the claims that</p> <p>16 FGIC has against the Debtors, as well as the</p> <p>17 claims that the trustees would have against the</p> <p>18 Debtors on origination matters. I think that's</p> <p>19 what I'm referring to.</p> <p>20 Q. FGIC has filed complaints against</p> <p>21 the Debtors in connection with these?</p> <p>22 A. Pre-petition they filed, I think</p> <p>23 over several months, 12 different lawsuits.</p> <p>24 Q. And you're counsel to the Debtor</p> <p>25 entities in each of those lawsuits?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I was co-counsel with Orrick, with</p> <p>3 the Orrick law firm, in each of those complaints.</p> <p>4 Q. And what's the status of those</p> <p>5 complaints today?</p> <p>6 A. I think it's stayed, if I remember</p> <p>7 correctly.</p> <p>8 Q. And when were those complaints</p> <p>9 stayed?</p> <p>10 A. You know, I have a recollection</p> <p>11 that FGIC's counsel, given all the swirl of rumors</p> <p>12 pre-petition, approached us about deferring the</p> <p>13 pre-motion conference with Judge Crotty that had</p> <p>14 been scheduled I think pre-petition, and they just</p> <p>15 said why don't we take an extension and let's see</p> <p>16 what happens.</p> <p>17 Everybody had an idea as a date if</p> <p>18 it came and went without a filing that there may</p> <p>19 not be a filing. That's what I seem to recall.</p> <p>20 So, we had informally stated, with the blessing of</p> <p>21 the Judge, and then once the filing occurred I</p> <p>22 seem to recall that there was a formal stay that</p> <p>23 was put on that was of a limited duration, and</p> <p>24 then it's been extended a couple times.</p> <p>25 Q. And when you say pre-petition, you</p>
Page 20	Page 21
<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 mean the period of time before ResCap filed its</p> <p>3 Chapter 11 petition?</p> <p>4 A. It would have been prior to May</p> <p>5 14th.</p> <p>6 Q. 2012?</p> <p>7 A. 2012.</p> <p>8 Q. At the time that those cases were</p> <p>9 stayed, what progress had been made in connection</p> <p>10 with discovery?</p> <p>11 A. Nothing. We hadn't even answered.</p> <p>12 Q. So, there was no progress in</p> <p>13 connection with the FGIC claims or the FGIC</p> <p>14 lawsuits?</p> <p>15 MR. KERR: Objection.</p> <p>16 MS. JAMES: I'll rephrase it.</p> <p>17 That's fair.</p> <p>18 Q. There had been no progress as to</p> <p>19 discovery in connection with the FGIC lawsuits</p> <p>20 filed against Debtors?</p> <p>21 A. That's probably fair. I know under</p> <p>22 the Federal Rules you can't start discovery until</p> <p>23 after you have your Rule 16 conference, as I</p> <p>24 recall, and we were going to test the pleadings in</p> <p>25 various regards with a Motion to Dismiss was our</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 plan at the time, and under Judge Crotty's</p> <p>3 procedure we had to send a letter and get -- and</p> <p>4 go through a pre-motion conference. And that's</p> <p>5 what I referenced before that had been continued,</p> <p>6 as I recall, prior to May 14th.</p> <p>7 Q. If you look at Paragraph 7 of your</p> <p>8 Expert Declaration, you write that:</p> <p>9 "I currently represent or have</p> <p>10 represented, over the past several years, a number</p> <p>11 of the Debtor entities, including Residential</p> <p>12 Capital, LLC, Residential Funding Co., and GMAC</p> <p>13 Mortgage, LLC."</p> <p>14 And then you say:</p> <p>15 "Four non-debtor affiliated</p> <p>16 entities."</p> <p>17 What do you mean -- what are the</p> <p>18 names of those non-Debtor affiliated entities that</p> <p>19 you refer to in Paragraph 7?</p> <p>20 A. AFI, Ally Financial, GMAC Holding,</p> <p>21 Ally Bank, and what's now called Ally Securities,</p> <p>22 the broker-dealer. Those are the four entities</p> <p>23 that at different times in different suits I had</p> <p>24 represented them.</p> <p>25 Q. And although these entities are not</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Debtor-affiliated entities, is it fair to say that</p> <p>3 each has some relationship with the Debtor?</p> <p>4 MR. KERR: Objection.</p> <p>5 A. I don't know what you're asking.</p> <p>6 Q. Does AFI, GMAC Holding, Ally Bank,</p> <p>7 and Ally Securities have some relationship with</p> <p>8 Residential Capital and its affiliated entities?</p> <p>9 A. Well, I have some understanding as</p> <p>10 to the corporate structure. I think AFI and GMAC</p> <p>11 Holding are still the parent -- indirect and</p> <p>12 direct parent of Residential Capital. Ally Bank</p> <p>13 would be, at best, just affiliate, and the same</p> <p>14 with Ally Securities, at least at the time I was</p> <p>15 representing them.</p> <p>16 At one point in time both of those</p> <p>17 entities were owned either by RFC or GMAC</p> <p>18 Mortgage, but I don't think at the time of my</p> <p>19 representation they were in that ownership chain,</p> <p>20 so they would have been subsidiaries of either</p> <p>21 GMAC Holdings or Ally Financial.</p> <p>22 Q. Your representation of these -- was</p> <p>23 your representation of these four non-Debtor</p> <p>24 affiliated entities in connection with RMBS</p> <p>25 litigation?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. Mostly. As I said, I have</p> <p>3 represented GMAC for many, many years, and GMAC</p> <p>4 was renamed to Ally Financial. So, I've had a lot</p> <p>5 of representation with GMAC over the years.</p> <p>6 But what I was -- to the extent in</p> <p>7 my Declaration I'm talking about RMBS, that would</p> <p>8 be -- those would be the only circumstances in</p> <p>9 which I was representing those entities, would be</p> <p>10 in RMBS, other than GMAC, or now known as Ally</p> <p>11 Financial.</p> <p>12 Q. And in Paragraph 8 of your</p> <p>13 Declaration, toward the end of that paragraph, you</p> <p>14 write that:</p> <p>15 "The cases involve claims of</p> <p>16 breaches of representations and warranties and</p> <p>17 related claims of alleged failure to repurchase</p> <p>18 loans pursuant to the terms of the applicable</p> <p>19 contracts."</p> <p>20 Is it okay if I refer to these</p> <p>21 types of cases as reps and warranties cases?</p> <p>22 A. Specifically the FGIC/MBIA -- or</p> <p>23 specifically the 12 FGIC and MBIA suits, sure.</p> <p>24 Q. And were the cases for the four</p> <p>25 non-Debtor affiliated entities also rep and</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 warranty cases?</p> <p>3 A. Arguably, yes, with respect to the</p> <p>4 FGIC claims. In the MBIA cases I didn't represent</p> <p>5 the non-Debtor affiliated entities because they</p> <p>6 weren't sued. It was only directly MBIA versus</p> <p>7 Residential Funding and GMAC Mortgage.</p> <p>8 Q. In Paragraph 7 you also refer to</p> <p>9 your representation of several individual former</p> <p>10 directors and officers of Debtor entities in over</p> <p>11 a dozen separate lawsuits involving certain Debtor</p> <p>12 entities issuance of RMBS.</p> <p>13 Are the cases you're referring to</p> <p>14 in that part of Paragraph 7 connected to the 12</p> <p>15 FGIC cases brought against the Debtor?</p> <p>16 A. That's part of it. At one point in</p> <p>17 time I think pre-petition there were about 17</p> <p>18 lawsuits that I was counsel of record for Debtors,</p> <p>19 some combination of Debtors, individual</p> <p>20 shareholders and/or the non-affiliated entities.</p> <p>21 The pure rep and warranty claims</p> <p>22 were really brought by the credit enhancers, MBIA</p> <p>23 and FGIC. Most of the other suits were investors</p> <p>24 in the securities that were bringing any number of</p> <p>25 claims.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. In Paragraph 8 you name three</p> <p>3 cases. You refer to a lead case, Financial</p> <p>4 Guaranty Insurance Company v. GMAC Mortgage, LLC.</p> <p>5 Does that lead case -- is that lead</p> <p>6 case in connection with all 12 FGIC cases?</p> <p>7 A. I think it's probably my way of</p> <p>8 saying it was the first filed.</p> <p>9 Q. Okay. But that case -- by</p> <p>10 referring to that case you're effectively</p> <p>11 referring to all 12 cases filed by FGIC against</p> <p>12 the Debtors?</p> <p>13 A. I think the sentence refers to 12.</p> <p>14 Q. And you also refer to MBIA</p> <p>15 Insurance Corporation v. Residential Funding Co.,</p> <p>16 LLC, and MBIA Insurance Corporation v. GMAC</p> <p>17 Mortgage, LLC. Is that correct?</p> <p>18 A. I do refer to those.</p> <p>19 Q. Are those three cases, albeit with</p> <p>20 one actually referring to 12, all of the -- and</p> <p>21 you refer to it as pure reps and warranties cases</p> <p>22 that you have been involved in?</p> <p>23 MR. KERR: Objection.</p> <p>24 A. In terms of actual lawsuits filed,</p> <p>25 that is the case. There were some investors that</p>



<p style="text-align: right;">Page 26</p> <p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 took advantage of the New York procedure that</p> <p>3 allowed for you to put a party on notice of</p> <p>4 intention to file a lawsuit, and not actually file</p> <p>5 the complaint, but just preserve or hold the</p> <p>6 statute. So, there were some of those that had</p> <p>7 rep and warranty assertions in it.</p> <p>8 Well, I don't want to disclose any</p> <p>9 specific advice that I gave the client</p> <p>10 pre-petition. I know we were involved in a number</p> <p>11 of rep and warranty related claims that I think</p> <p>12 ultimately led to some tolling agreements and</p> <p>13 things like that.</p> <p>14 So, in terms of pure rep and</p> <p>15 warranty lawsuits, yes, that would be the case.</p> <p>16 But I had advised the counsel -- or advised the</p> <p>17 client and been involved in looking at other rep</p> <p>18 and warranty claims that didn't manifest into</p> <p>19 suits.</p> <p>20 Q. And those tolling agreements that</p> <p>21 the Debtor's entered into with some investors, are</p> <p>22 they still in place?</p> <p>23 A. I don't know.</p> <p>24 Q. Were any complaints ever filed in</p> <p>25 connection with any of those notices?</p>	<p style="text-align: right;">Page 27</p> <p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I can't answer that. I really</p> <p>3 haven't kept up with what has been filed as it</p> <p>4 relates to the non-Debtor entity since the filing.</p> <p>5 I transitioned out of at the filing all of my</p> <p>6 representation of all the Ally entities that were</p> <p>7 non-Debtors. It took a little bit of time, but I</p> <p>8 did transition out of that, and I just, frankly,</p> <p>9 haven't kept track of what they were doing.</p> <p>10 There's more than enough work to do to assist</p> <p>11 Morrison and Foerster with respect to analyzing</p> <p>12 proofs of claim and dealing with the various</p> <p>13 issues of the bankruptcy.</p> <p>14 Q. Okay. Going back to paragraph 8,</p> <p>15 you said that the FGIC Guaranty Insurance Company,</p> <p>16 the GMAC lead case, along with the 11 other cases</p> <p>17 filed in connection with that, are stayed or were</p> <p>18 stayed pending the Chapter 11 petition.</p> <p>19 What progress -- in what stage is</p> <p>20 the MBIA Insurance Corporation V Residential</p> <p>21 Funding Co. case?</p> <p>22 A. At the time of filing of the</p> <p>23 petition?</p> <p>24 Q. Now.</p> <p>25 A. It's stayed.</p>
<p style="text-align: right;">Page 28</p> <p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. It's stayed as well?</p> <p>3 A. An automatic stay stayed it because</p> <p>4 it was the only against an entity that filed for</p> <p>5 bankruptcy. I do seem to recall that there may</p> <p>6 have been an order that was put into the state</p> <p>7 file by the judge that acknowledged that it was</p> <p>8 stayed. But I think we filed various notices of</p> <p>9 bankruptcy in the litigation, and those that were</p> <p>10 automatically stayed were automatically stayed.</p> <p>11 Some courts did enter orders.</p> <p>12 Q. At the time that the MBIA Insurance</p> <p>13 Corp. V Residential Funding Co. matter was stayed,</p> <p>14 what phase was it in?</p> <p>15 A. We still had some remaining fact</p> <p>16 discovery to complete, and the first round of</p> <p>17 expert reports had been exchanged. And by that I</p> <p>18 mean, MBIA offered up its five or six expert</p> <p>19 reports. And on behalf of RFC, we offered up</p> <p>20 expert reports on affirmative defenses that we had</p> <p>21 the burden on. Both sides were in the midst of</p> <p>22 preparing rebuttal reports. I don't think they</p> <p>23 were due to be exchanged until mid-July, and so at</p> <p>24 the filing of that, it just stopped.</p> <p>25 Q. And you said that MBIA had</p>	<p style="text-align: right;">Page 29</p> <p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 submitted five or six expert reports.</p> <p>3 What subjects did those expert</p> <p>4 reports cover?</p> <p>5 A. You're taxing my memory now on</p> <p>6 that. It's been a long time since I've looked at</p> <p>7 those.</p> <p>8 Generally, they covered things like</p> <p>9 damages. They had a statistician, as I recall, to</p> <p>10 offer up some opinions on how they could prove</p> <p>11 violations -- I don't know if it was a pure</p> <p>12 sample, but they did do some sampling, and they</p> <p>13 had that as support. There was a servicing</p> <p>14 expert, and then there was an expert on loan</p> <p>15 breaches. That's what I recall, as I sit here</p> <p>16 right now.</p> <p>17 Q. And of the RFC expert reports on</p> <p>18 affirmative defenses, can you recall what</p> <p>19 affirmative defenses those covered?</p> <p>20 A. I can. They covered the housing</p> <p>21 crisis and they covered the due diligence of MBIA</p> <p>22 or lack thereof.</p> <p>23 Q. The next case in paragraph 12 is</p> <p>24 the MBIA Insurance Corp. V GMAC Mortgage Corp.,</p> <p>25 LLC?</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. You mean in paragraph 8?</p> <p>3 Q. Paragraph 8, sorry. I assume that</p> <p>4 case was also stayed when the Debtors filed for</p> <p>5 bankruptcy?</p> <p>6 A. Automatic stay stayed it, yes.</p> <p>7 Q. And what phase was that litigation</p> <p>8 in at the time of the stay?</p> <p>9 A. We were in fact discovery. Quinn</p> <p>10 Emanuel represented MBIA in that case and actually</p> <p>11 I think the week or so before filing with all the</p> <p>12 rumors that were swirling around, they cancelled</p> <p>13 some depositions that they had scheduled. So</p> <p>14 let's just take a hiatus, so to speak, and see</p> <p>15 what happens. But we were only -- it's hard to</p> <p>16 say for sure, but I'd say probably about halfway</p> <p>17 through the fact depositions, maybe a little</p> <p>18 further.</p> <p>19 Q. And no expert reports had been</p> <p>20 exchanged in that matter?</p> <p>21 A. No. And just so you're aware, I'm</p> <p>22 probably volunteering, and I shouldn't, but, I</p> <p>23 mean, the expert phase was under both and both</p> <p>24 cases was very similar, and it was going to be a</p> <p>25 very lengthy process. I think the expert phase</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 potentially in the RFC case could have lasted a</p> <p>3 year because that was at the point in which MBIA</p> <p>4 was going to disclose at the loan level what its</p> <p>5 alleged breaches of warranties and reps were.</p> <p>6 They had resisted answering interrogatories and</p> <p>7 providing discovery. And so it was structured in</p> <p>8 a way that we do the basic fact discovery, and</p> <p>9 then their actual allegations as individual loans</p> <p>10 would be disclosed, and then we would have a</p> <p>11 chance to review those with our underwriting</p> <p>12 expert and come in and rebut.</p> <p>13 So depending on how many loans they</p> <p>14 really wanted to contest, all of them or something</p> <p>15 less, it was on a rolling period that could go out</p> <p>16 for a year or more. A same structure was set in</p> <p>17 place with GMAC mortgage. We just didn't get to</p> <p>18 that point because we were in still in fact</p> <p>19 discovery.</p> <p>20 Q. Other than the pure reps and</p> <p>21 warranties cases described in paragraph 8 of your</p> <p>22 declaration, have you been involved in any other</p> <p>23 reps and warranties cases on behalf of a Debtor</p> <p>24 affiliated entity or any other entity?</p> <p>25 A. For pure reps and warranties</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 claims, no.</p> <p>3 Q. If I can ask you to take a look at</p> <p>4 paragraph 14 of your declaration, and I'm looking</p> <p>5 specifically at the end of that paragraph where</p> <p>6 you write, "It is my opinion that the settlement</p> <p>7 of the claims and liabilities released by the FGIC</p> <p>8 Settlement Agreement would remove a significant</p> <p>9 risk of an unfavorable legal outcome and the</p> <p>10 necessity of incurring the significant expense of</p> <p>11 litigating these claims to final resolution."</p> <p>12 Did I read that correctly?</p> <p>13 A. You did.</p> <p>14 Q. What do you mean when you say</p> <p>15 "would remove a significant risk of an unfavorable</p> <p>16 legal outcome"?</p> <p>17 A. Well, I believe that the claims and</p> <p>18 liabilities released by the FGIC Settlement</p> <p>19 Agreement were expressed in quite a few proofs of</p> <p>20 claims that were filed by both the trustees and</p> <p>21 FGIC that would have necessitated resolution</p> <p>22 through some contested proceeding, if you didn't</p> <p>23 have a settlement.</p> <p>24 Q. Referring to the claims brought by</p> <p>25 FGIC against the Debtor-related entities, the</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 suits filed by FGIC against the Debtor, regarding</p> <p>3 reps and warranties, what's your understanding of</p> <p>4 the amount of those claims?</p> <p>5 MR. KERR: So I'm clear, are you</p> <p>6 talking about pre-petition claims?</p> <p>7 MS. JAMES: I am. I apologize. I</p> <p>8 shouldn't say Debtor. Against ResCap and</p> <p>9 ResCap-related entities.</p> <p>10 A. I don't think they were quantified</p> <p>11 a dollar amount. I don't think we were at that</p> <p>12 point.</p> <p>13 Q. What was your understanding of the</p> <p>14 exposure of ResCap and ResCap-related entities</p> <p>15 under these claims?</p> <p>16 MR. KERR: Objection.</p> <p>17 THE WITNESS: Can I hear that</p> <p>18 again?</p> <p>19 (The requested portion of the</p> <p>20 record was read.)</p> <p>21 A. Again, I don't know that I ever got</p> <p>22 to the point in that case where we quantified</p> <p>23 anything that would allow me to answer that</p> <p>24 question other than to indicate that I knew there</p> <p>25 were 20 some securitizations that were at issue,</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 and I can't remember at this point what the total</p> <p>3 outstanding was on it.</p> <p>4 You know, FGIC wasn't just pure rep</p> <p>5 and warranty claims. They were also asserting a</p> <p>6 number of tort claims, and they were asserting</p> <p>7 aiding and abetting claims and trying to pierce</p> <p>8 the corporate veil. So from the standpoint of</p> <p>9 where I sat when I was defending those</p> <p>10 pre-petition, we were just basically looking at in</p> <p>11 terms of initial outstanding balances on the</p> <p>12 securitizations was the outer limits of what we</p> <p>13 were doing. Plus, I guess, punitive damages if</p> <p>14 somebody could prove a fraud claim.</p> <p>15 Q. In your expert declaration where</p> <p>16 you write that the "settlement of claims and</p> <p>17 liabilities released by the FGIC Settlement</p> <p>18 Agreement would remove a significant risk," you're</p> <p>19 not opining as to the monetary amount associated</p> <p>20 with that risk?</p> <p>21 A. What I evaluated was the claims</p> <p>22 that were being asserted or would be asserted --</p> <p>23 actually, let me step back.</p> <p>24 What I was evaluating was the</p> <p>25 claims that were being released, and I did have</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 knowledge of both the claims that had been</p> <p>3 asserted in the complaints, as well as the proofs</p> <p>4 of claim, and that is what I was looking at in</p> <p>5 terms of complexity in offering my opinion on</p> <p>6 that.</p> <p>7 Now, there is a little bit of a</p> <p>8 monetary component because I know what the burdens</p> <p>9 were in terms of the expense associated with</p> <p>10 defending a claim. So to an extent, I am offering</p> <p>11 some view on cost associated with defending these</p> <p>12 claims. But as to the settlement of the legal</p> <p>13 outcome, no, I'm not opining as to a specific</p> <p>14 dollar amount.</p> <p>15 Does that answer what you asked?</p> <p>16 Q. It does. I'm going to ask you a</p> <p>17 few more questions, if I may. You just said that</p> <p>18 you had knowledge of the claims asserted in the</p> <p>19 Complaint, as well as the proofs of claim.</p> <p>20 Are you aware of the aggregate</p> <p>21 amount of those claims asserted in the Complaint,</p> <p>22 as well as the proofs of claim?</p> <p>23 A. Again, I'm not sure an aggregate</p> <p>24 amount was put in the Complaint, but the proof of</p> <p>25 claims, obviously, had an aggregate amount. For</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 some reason, I can't remember the exact amount,</p> <p>3 but it may be somewhere -- I want to say the</p> <p>4 trustees were asserting claims around eight</p> <p>5 billion maybe, and five billion was the amount</p> <p>6 being asserted by FGIC, but I could be off on</p> <p>7 that. I just know there's a lot of claims that</p> <p>8 have been filed that aggregate into numbers that</p> <p>9 were at least north of a billion.</p> <p>10 Q. Going back to your declaration,</p> <p>11 your second opinion, which is captured in bullet</p> <p>12 point two on page 2, you discuss the expense of</p> <p>13 resolution of the claims and liabilities covered</p> <p>14 by the FGIC Settlement Agreement, and you opine</p> <p>15 that resolving those claims would be, and I'm</p> <p>16 quoting, "enormously expensive."</p> <p>17 Did you put a dollar figure on the</p> <p>18 expense associated with resolving the claims and</p> <p>19 liabilities covered by the FGIC Settlement</p> <p>20 Agreement?</p> <p>21 A. I don't think I've ever attached a</p> <p>22 specific dollar figure to it.</p> <p>23 Q. And when you wrote "enormously</p> <p>24 expensive," did you have a dollar figure in mind?</p> <p>25 A. No, there's not a dollar figure</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 attached to the use of enormous. It's my</p> <p>3 midwestern style.</p> <p>4 Q. In considering the concept of the</p> <p>5 resolution of claims being "enormously expensive,"</p> <p>6 did you consider that the potential losses that</p> <p>7 may be incurred by the Debtors, ResCap and its</p> <p>8 related entities, if it were to lose the cases</p> <p>9 brought by FGIC?</p> <p>10 MR. KERR: Objection.</p> <p>11 A. Well, I was aware of what was being</p> <p>12 claimed in the proofs of claim, and I was also</p> <p>13 aware of what the outer limits were of -- outer</p> <p>14 limits based on the securitizations.</p> <p>15 I think in one of the complaints,</p> <p>16 just by way of example, FGIC asserted there was a</p> <p>17 97 percent breach rate. So you could basically</p> <p>18 take the initial outstanding balance and take 97</p> <p>19 percent of that and say that's the outer limit if</p> <p>20 they're right and they hit. So to that extent,</p> <p>21 yes, I was taking into account the outer limits of</p> <p>22 exposure that could happen.</p> <p>23 Q. Could you turn to paragraph 134 of</p> <p>24 your declaration? And paragraph 134 appears under</p> <p>25 a heading Outcomes in Other Monoline Litigations.</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Did you consider outcomes in other</p> <p>5 monoline litigations in connection with your</p> <p>6 declaration?</p> <p>7 A. I don't think my opinions were</p> <p>8 dependent on what I was seeing in other</p> <p>9 litigation. I just wanted for thoroughness and to</p> <p>10 make sure that the full chain of events that were</p> <p>11 occurring within the industry were recorded. But</p> <p>12 I wasn't making any comparison between any</p> <p>13 particular settlement and this settlement.</p> <p>14 Q. If we can go through the other</p> <p>15 monoline outcomes, in paragraph 134, you state</p> <p>16 toward the end, "The only monoline case which has</p> <p>17 gone to trial resulted in a sizable verdict for</p> <p>18 the monoline."</p> <p>19 Which case are you referring to in</p> <p>20 that paragraph?</p> <p>21 A. I think that's the Flagstar case.</p> <p>22 Q. That's the case discussed in</p> <p>23 paragraph 135 of your opinion?</p> <p>24 A. Yes. In the raw dollar amount, I</p> <p>25 can't remember what it is as I'm sitting here. In</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the raw dollar amount, it may not be huge, but as</p> <p>3 I understand it, they almost got 100 percent of</p> <p>4 what they were asking, if they didn't get 100</p> <p>5 percent. That's what I meant by a substantial</p> <p>6 verdict.</p> <p>7 Q. Was that surprising to you that in</p> <p>8 that case, the monoline recovered 100 percent or</p> <p>9 nearly 100 percent of its claims?</p> <p>10 MR. KERR: Objection.</p> <p>11 A. I didn't study the case to know all</p> <p>12 of the specifics. I know some of the differences.</p> <p>13 And being a confident trial lawyer, I would have</p> <p>14 expected a different outcome had I been trying it.</p> <p>15 I think some tactical decisions were made in the</p> <p>16 course of the litigation that didn't turn out as</p> <p>17 well as they would have hoped. The reps are</p> <p>18 completely different between the reps that you're</p> <p>19 seeing here and what they were principally relying</p> <p>20 on in Flagstar.</p> <p>21 Q. How are they different?</p> <p>22 A. I think Flagstar did have a hard</p> <p>23 fraud rep to Assured. And in the area of stated</p> <p>24 documents, it's just a tougher case to defend with</p> <p>25 a fraud rep. And they didn't really contest</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Assured's diligence, as I recall. They basically</p> <p>3 banked the case on being able to discredit</p> <p>4 Assured's expert, and that didn't work.</p> <p>5 Q. And at the end of paragraph 135,</p> <p>6 you write, "I have, however, considered that</p> <p>7 adverse outcome in that coming to my opinion that</p> <p>8 there is a risk of an unfavorable legal outcome if</p> <p>9 the claims and liabilities released by the FGIC</p> <p>10 Settlement Agreement were litigated."</p> <p>11 What did you mean by that?</p> <p>12 A. When you're looking at any</p> <p>13 potential settlement and you're evaluating the</p> <p>14 complexities and the risks associated with it, you</p> <p>15 have to take notice of an adverse jury verdict --</p> <p>16 not adverse. It wasn't a jury verdict; it was a</p> <p>17 bench trial. It was Judge Rycroft. But you have</p> <p>18 to take into account how that trier of fact</p> <p>19 evaluated those issues. And I weighed it into</p> <p>20 my -- basically just confirmed and corroborated my</p> <p>21 own view that there is a lot of uncertainty here</p> <p>22 and there's risks associated with proceeding to</p> <p>23 trial.</p> <p>24 Q. In paragraph 136, you discuss or</p> <p>25 you write, "Several of the monolines have also</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 obtained significant monetary payments in</p> <p>3 settlement of pending or unfilled litigation." You</p> <p>4 then refer to two cases, again, in connection with</p> <p>5 Assured Guaranty Corp. What is your understanding</p> <p>6 of these settlements and the claims that were</p> <p>7 settled pursuant to these settlement agreements?</p> <p>8 A. Incomplete. As I think I noted</p> <p>9 elsewhere, I was limited to public information.</p> <p>10 There's not a whole lot of full disclosure, at</p> <p>11 least at the time that I was doing this on those</p> <p>12 settlements. So I was just making note of dollar</p> <p>13 amounts that were settled and whether they were</p> <p>14 involving other claims that I couldn't really have</p> <p>15 visibility into.</p> <p>16 Q. And in that paragraph you refer to</p> <p>17 a settlement for roughly 165 million and another</p> <p>18 settlement reportedly for 358 million.</p> <p>19 Do you have an understanding as to</p> <p>20 what percentage of the initial claims those</p> <p>21 settlement figures represented?</p> <p>22 A. No.</p> <p>23 Q. Paragraph 137, you refer to a</p> <p>24 Syncora Guaranty, Inc. settlement.</p> <p>25 Do you see that?</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. And there you write that those</p> <p>4 claims settled for 375 million, and you finish</p> <p>5 that paragraph by writing, "Bank of America later</p> <p>6 publicly announced that the settlement resolved</p> <p>7 roughly \$600 million of outstanding put-back</p> <p>8 claims against Countrywide."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. That recovery, is it fair to say,</p> <p>12 is approximately 62, 63 percent of the claims?</p> <p>13 A. I don't think it's appropriate to</p> <p>14 say that. I don't know what percentage ultimately</p> <p>15 was at issue. I don't know what ultimately was at</p> <p>16 issue. I haven't been able to delve into it in</p> <p>17 the public available information to reach a</p> <p>18 conclusion on whether 375 is 60 percent because I</p> <p>19 don't know if the base was 600 million. They</p> <p>20 publicly announced that that resolved roughly 600</p> <p>21 million. That doesn't mean that's the totality of</p> <p>22 what was at issue and ultimately settled.</p> <p>23 Q. Paragraph 138, you refer to MBIA V</p> <p>24 Flagstar. Do you see that?</p> <p>25 A. Yes.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. And, again, there's a settlement</p> <p>3 discussed here for 110 million, and you write, "In</p> <p>4 that case MBIA initially pled that it had paid</p> <p>5 more than \$165 million in claims arising from</p> <p>6 Flagstar's alleged breaches of representations and</p> <p>7 warranties."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you understand there that the</p> <p>11 settlement of 110 million represented</p> <p>12 approximately, say, 70 percent of the initial</p> <p>13 claims?</p> <p>14 MR. KERR: Objection.</p> <p>15 A. I don't know that you can do the</p> <p>16 math the way you've done that. I think we have</p> <p>17 two data points. One that they had initially pled</p> <p>18 that they paid 165 million in claims. Now, that</p> <p>19 would have been fixed at whatever point in time</p> <p>20 they made the filing. There, obviously, would be</p> <p>21 expert testimony on what they expect the future</p> <p>22 losses to be and the future claims to be paid.</p> <p>23 So, again, I don't know whether</p> <p>24 that 165 is the totality of what was involved in</p> <p>25 settling. And often these involve other exposures</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 that are being wrapped up into a global</p> <p>3 settlement. I don't know if that's the case here.</p> <p>4 So I don't think you can do the math the way you</p> <p>5 want to do it.</p> <p>6 Q. And then finally you refer to a</p> <p>7 MBIA settlement against Countrywide for 1.6</p> <p>8 billion in cash from Bank of America, plus other</p> <p>9 consideration. Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Do you have an understanding as to</p> <p>12 what percentage of the initial claims that \$1.6</p> <p>13 billion in cash represented?</p> <p>14 MR. KERR: Objection.</p> <p>15 A. No.</p> <p>16 Q. And you finish this section by</p> <p>17 writing, "I have considered these settlements as</p> <p>18 showing that other defendants facing similar</p> <p>19 allegations thought they were faced with a</p> <p>20 significant risk of an adverse outcome if the</p> <p>21 claims were litigated on the merits."</p> <p>22 Do you see that?</p> <p>23 A. Right.</p> <p>24 Q. Do you believe that Debtors or</p> <p>25 ResCap and ResCap-related entities facing the FGIC</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 claims were faced with a significant risk of an</p> <p>3 adverse outcome if the claims were litigated on</p> <p>4 the merits?</p> <p>5 A. I think that's the whole import of</p> <p>6 what I've put in my declarations, that there are</p> <p>7 any number of issues that could result ultimately</p> <p>8 in an adverse verdict. And that's true on FGIC's</p> <p>9 claims, as well as the trustee's claims that were</p> <p>10 being released.</p> <p>11 Q. Is it fair to say that's true in a</p> <p>12 lot of lawsuits?</p> <p>13 MR. KERR: Objection.</p> <p>14 A. No. There are some suits where</p> <p>15 they shouldn't be filed and they get dismissed</p> <p>16 very early on, or you have suits that are nuisance</p> <p>17 settlements. I didn't perceive any of these</p> <p>18 settlements to be what I would call a nuisance</p> <p>19 settlement. So their clearly was and should be,</p> <p>20 given the uncertainty of this law, some attention</p> <p>21 given to the fact that you are at a risk of an</p> <p>22 adverse outcome in this space.</p> <p>23 Q. You're not saying that any of the</p> <p>24 FGIC lawsuits were nuisance suits or frivolous</p> <p>25 suits?</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. We were going to test some of them</p> <p>3 on a motion to dismiss basis. So I believed at</p> <p>4 the time that we had some valid motions to</p> <p>5 dismiss. I've been around the block enough to</p> <p>6 know that motions to dismiss tend to be the first</p> <p>7 stage that then is followed on with an amended</p> <p>8 complaint and then another motion and another</p> <p>9 amended complaint. So I didn't see any finality</p> <p>10 that was going to be quickly achieved in this</p> <p>11 litigation.</p> <p>12 Q. None of the arguments that you were</p> <p>13 considering making in your motions to dismiss</p> <p>14 involved the notion that FGIC had brought these</p> <p>15 claims -- let me rephrase.</p> <p>16 In making your motion to dismiss or</p> <p>17 considering in making a motion to dismiss, were</p> <p>18 you considering making the argument that FGIC had</p> <p>19 brought frivolous claims against ResCap and</p> <p>20 ResCap-related entities?</p> <p>21 A. I did not intend to assert any Rule</p> <p>22 11 motion.</p> <p>23 Q. If these cases brought by FGIC</p> <p>24 against ResCap and ResCap-related entities are not</p> <p>25 settled and the stay is lifted, will you continue</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 to act as counsel to the ResCap and ResCap-related</p> <p>3 entities?</p> <p>4 A. I guess we'd have to ask the client</p> <p>5 that. I think they were happy with my</p> <p>6 representation. But if the case activated again,</p> <p>7 in front of Judge Crotty, I would probably expect</p> <p>8 to be representing the Debtor entities.</p> <p>9 Now, Maher Brown represented the</p> <p>10 non-Debtor entities in that case. So if the case</p> <p>11 gets activated for some reason, I wouldn't be</p> <p>12 representing those entities.</p> <p>13 Q. The expert declaration that you</p> <p>14 filed in connection with Debtor's 9019 motion is</p> <p>15 publicly available. Is that true?</p> <p>16 A. Say that again?</p> <p>17 Q. Your expert declaration that we're</p> <p>18 looking at right now, Lipps Exhibit 1, is publicly</p> <p>19 available. Is that true?</p> <p>20 A. I believe so. I believe that's a</p> <p>21 PACER number at the top.</p> <p>22 Q. Did you consider the fact that your</p> <p>23 expert declaration would be available to the FGIC</p> <p>24 plaintiffs should the FGIC cases continue?</p> <p>25 A. I assume that they would have keen</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 interest in anything I say about the litigation.</p> <p>3 Q. Did you consider that while writing</p> <p>4 this expert declaration?</p> <p>5 A. No, I was given a specific</p> <p>6 assignment. I went about researching on the</p> <p>7 specific assignment and writing on it. I didn't</p> <p>8 worry about any views of others.</p> <p>9 (Recess taken.)</p> <p>10 Q. Mr. Lipps, are you familiar with</p> <p>11 the order entered in the Bankruptcy Court</p> <p>12 authorizing the employment and retention of</p> <p>13 Carpenter Lipps &amp; Leland, LLP as special</p> <p>14 litigation to the Debtors?</p> <p>15 A. I am aware that it was entered.</p> <p>16 It's been a while since I looked at it.</p> <p>17 MS. JAMES: Okay. I'm handing to</p> <p>18 the Reporter a document to be marked as Lipps</p> <p>19 Exhibit 2. This was filed with the Bankruptcy</p> <p>20 Court, Docket 907, and it's the order I just</p> <p>21 referred to.</p> <p>22 (Lipps Exhibit 2 marked for</p> <p>23 identification.)</p> <p>24 Q. Have you seen this document before,</p> <p>25 Mr. Lipps?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I'm sure I have.</p> <p>3 Q. If I could draw your attention to</p> <p>4 page 2, Paragraph 3, which begins:</p> <p>5 "As special litigation counsel,</p> <p>6 CLL, which is Carpenter Lipps &amp; Leland, LLP, is</p> <p>7 authorized to provide the following services in</p> <p>8 connection with the Debtors' cases."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. Where in this -- the following</p> <p>12 areas in which you're authorized to provide</p> <p>13 services does it state that you are authorized to</p> <p>14 provide expert services?</p> <p>15 MR. KERR: Objection.</p> <p>16 A. I don't know that those words are</p> <p>17 specifically in here, but certainly in my judgment</p> <p>18 it would be subsumed within 3(b).</p> <p>19 Q. And that reads:</p> <p>20 "Assist the Debtors in responding</p> <p>21 to claims, defenses, or settlement discussions</p> <p>22 related to PLS litigation of Financial Guaranty</p> <p>23 Insurance."</p> <p>24 A. It goes on:</p> <p>25 "Including assisting Morrison &amp;</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Foerster with respect to a motion to stay, motions</p> <p>3 to approve settlements of liability related to PLS</p> <p>4 litigation, potential claims that may be made by</p> <p>5 PLS, investors, trustees, underwriters or</p> <p>6 Financial Guaranty insurers, and providing advice</p> <p>7 concerning the Debtors' rights and</p> <p>8 responsibilities under the transaction documents</p> <p>9 for these securitizations."</p> <p>10 Q. And under 3(b), in connection with</p> <p>11 your Expert Declaration here, do you believe that</p> <p>12 you are providing assistance to Morrison &amp;</p> <p>13 Foerster with this motion?</p> <p>14 MR. KERR: Objection.</p> <p>15 A. Morrison &amp; Foerster asked me to</p> <p>16 look at the FGIC settlement and see if I could</p> <p>17 provide some opinions on matters that were</p> <p>18 pertinent to the 9019.</p> <p>19 Q. And they asked you to do that in</p> <p>20 your role as special litigation counsel?</p> <p>21 MR. KERR: Objection.</p> <p>22 A. I don't think I signed the</p> <p>23 declaration as special litigation counsel. I was</p> <p>24 an outlet that was available to them, having been</p> <p>25 previously approved by the Bankruptcy Court to</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 assist them in connection with motions to approve</p> <p>3 settlements and matters related to PLS litigation.</p> <p>4 Q. But your role in the ResCap</p> <p>5 bankruptcy is as special litigation counsel.</p> <p>6 Is that fair?</p> <p>7 A. It's what my firm was retained to</p> <p>8 do. In that capacity we've assisted Morrison &amp;</p> <p>9 Foerster throughout the bankruptcy, and a whole</p> <p>10 host of activities, all of which have been</p> <p>11 recorded in our time records and submitted to the</p> <p>12 Court and approved during the approval process.</p> <p>13 Q. When is your third interim request</p> <p>14 for reimbursement due with the Court, Mr. Lipps?</p> <p>15 A. I saw an e-mail about that the</p> <p>16 other day. I think it's next month.</p> <p>17 Q. Did you play any role in drafting</p> <p>18 the Debtors' 9019 motion in referring to the FGIC</p> <p>19 settlement?</p> <p>20 MR. KERR: Objection. Are you</p> <p>21 talking about the motion itself or -- because</p> <p>22 you talked about his Declaration.</p> <p>23 MS. JAMES: I'm sorry. I'm talking</p> <p>24 about his motion, the Debtors' motion.</p> <p>25 A. I saw it after it was filed, but I</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 didn't have any role in drafting it. I noticed</p> <p>3 that my Declaration was referred to throughout, so</p> <p>4 I guess to that extent I had some involvement in</p> <p>5 that they used my Declaration in the motion.</p> <p>6 MS. JAMES: I have no further</p> <p>7 questions at this time, Mr. Lipps. I believe</p> <p>8 Mr. Carney has some questions. Thank you.</p> <p>9 EXAMINATION BY</p> <p>10 MR. CARNEY:</p> <p>11 Q. Good morning. I am Michael Carney</p> <p>12 from McKool Smith. We represent Freddie Mac.</p> <p>13 A. Nice to meet you.</p> <p>14 Q. Same here. Have you ever been</p> <p>15 deposed before?</p> <p>16 A. I have.</p> <p>17 Q. How many times?</p> <p>18 A. I think one time.</p> <p>19 Q. And when was that?</p> <p>20 A. It was in connection with the 9019</p> <p>21 for the RMBS Trust Settlement.</p> <p>22 Q. And can you describe for me, to</p> <p>23 your knowledge, why you were deposed in connection</p> <p>24 with that?</p> <p>25 MR. KERR: Objection.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I think you'd probably have to ask</p> <p>3 the Creditors Committee or I think MBIA at the</p> <p>4 time. They've asked some questions.</p> <p>5 Q. And so, to your understanding, what</p> <p>6 was the subject of your deposition? Do you have</p> <p>7 any idea why you were called?</p> <p>8 A. Well, sure. I had given a</p> <p>9 Declaration in support of the 9019 motion for</p> <p>10 approval of the RMBS Trust Settlement.</p> <p>11 Q. And how -- I don't want to go</p> <p>12 through a line-by-line comparison, but can you</p> <p>13 tell me how similar, in your review, the substance</p> <p>14 of that Declaration is, the Declaration you're</p> <p>15 giving in support of the ResCap settlement?</p> <p>16 MR. KERR: Objection.</p> <p>17 A. I think you'd have to lay the two</p> <p>18 side-by-side. Certainly one component of the</p> <p>19 Declaration that I offered in connection with the</p> <p>20 9019 was to analyze the uncertain state of the law</p> <p>21 and assess risks associated with prosecuting the</p> <p>22 claims in the environment of that law.</p> <p>23 And so, there would be some</p> <p>24 similarity in terms of identifying the legal</p> <p>25 issues. I think the law continues to evolve. And</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 so, I would expect that there's probably some</p> <p>3 additional cases and additional theories that are</p> <p>4 contained in the Declaration that's been filed for</p> <p>5 the FGIC 9019 that were not there in the RMBS</p> <p>6 Trust Settlement Declaration.</p> <p>7 Q. As you sit here today, can you tell</p> <p>8 me what those differences would be?</p> <p>9 MR. KERR: Objection.</p> <p>10 A. Whatever cases have come out since</p> <p>11 I filed that Declaration. I remember in the</p> <p>12 deposition Mr. Bentley was asking me some</p> <p>13 questions about -- I think it was a WMC case that</p> <p>14 had just come out between when I submitted the</p> <p>15 Declaration and the deposition.</p> <p>16 And so, that's been written up in</p> <p>17 this Declaration in a form that was not in my</p> <p>18 initial Declaration. I believe there's been some</p> <p>19 statute of limitations cases that have come out</p> <p>20 since I filed the Declaration in the RMBS trust</p> <p>21 litigation relating to whether or not the statute</p> <p>22 runs from issuance of the securitization or from a</p> <p>23 repurchase demand.</p> <p>24 Those are just some examples of</p> <p>25 some of the case law developments that have</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 occurred between those two declarations.</p> <p>3 Q. Any others you can think of that</p> <p>4 would be in this Declaration?</p> <p>5 MR. KERR: Objection. Which</p> <p>6 Declaration are you referring to?</p> <p>7 MR. CARNEY: The 9019 Declaration</p> <p>8 regarding the FGIC settlement.</p> <p>9 A. I mean, I think the basic elements</p> <p>10 of the claim are the same, and I would expect that</p> <p>11 the backbone, if you will, of each of those as</p> <p>12 you're analyzing these RMBS claims would be the</p> <p>13 same. It's just there's a more robust discussion</p> <p>14 as the law develops in certain areas between the</p> <p>15 two declarations. And I can't tell you, since</p> <p>16 it's been a long time since I looked at the RMBS</p> <p>17 Declaration, what specifically the changes were.</p> <p>18 Q. So, to say that there were changes,</p> <p>19 I understand that you testified the changes were,</p> <p>20 among other things, changes in the law, case law,</p> <p>21 and the statutes of limitations. Is that correct?</p> <p>22 A. Well, there's more cases out there.</p> <p>23 I don't think anything has ever reached an</p> <p>24 appellate level that I recall, other than the</p> <p>25 first department ruled on an appeal in the</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 MBIA/Countrywide case. It's been mostly at the</p> <p>3 trial court level and the magistrate level, and</p> <p>4 some of the evidentiary decisions that I</p> <p>5 reference.</p> <p>6 I think the Flagstar case, for</p> <p>7 example, did go to trial after I submitted the</p> <p>8 first Declaration. And Judge Rycroft may have</p> <p>9 issued more opinions related to that case that</p> <p>10 would be discussed in the current Declaration that</p> <p>11 were not in the original.</p> <p>12 Q. So, is it safe to say that the</p> <p>13 current Declaration -- the Declaration in support</p> <p>14 of the 9019 motion regarding the FGIC settlement,</p> <p>15 is it safe to say that that is an update of your</p> <p>16 previous Declaration in support of the RMBS 9019</p> <p>17 motion?</p> <p>18 MR. KERR: Objection.</p> <p>19 A. No, I wouldn't characterize it that</p> <p>20 way. I mean, there are portions of this</p> <p>21 Declaration filed in the FGIC 9019 that would have</p> <p>22 appeared in the RMBS Trust Settlement Declaration,</p> <p>23 but the two projects were not identical, and some</p> <p>24 of the opinions offered in connection with the</p> <p>25 RMBS Trust are not opinions that are offered here.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 So, I don't think it's fair to say it's an update.</p> <p>3 Q. Okay. Then could we just start out</p> <p>4 with how were -- how was the project that you were</p> <p>5 engaged to do with respect to the FGIC settlement</p> <p>6 different from the project you're engaged to do</p> <p>7 with the RMBS settlement?</p> <p>8 A. Well, what I remember about the</p> <p>9 RMBS Trust Settlement is I had substantial</p> <p>10 dialogue with the examiners regarding whether the</p> <p>11 settlement was within the range of reasonableness</p> <p>12 and in the best interest of the estate. That was</p> <p>13 a specific opinion that I offered in connection</p> <p>14 with that settlement. I have not been asked to</p> <p>15 offer that opinion in this case.</p> <p>16 Q. Anything else you can think of?</p> <p>17 A. Like I said, it's been a while</p> <p>18 since I looked at the earlier Declaration. I</p> <p>19 certainly, in the earlier Declaration, talked</p> <p>20 about the risks and uncertainty associated with</p> <p>21 this area of law and these kinds of claims, and I</p> <p>22 talked about cost. So, I can't think of any other</p> <p>23 differences, in terms of the scope of the project.</p> <p>24 Q. So, was there anything in the</p> <p>25 Declaration, in support of the FGIC settlement</p>



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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 that we're looking at, this Exhibit 4 in front of</p> <p>3 you, is there anything in this Declaration that</p> <p>4 was not in your Declaration in connection with the</p> <p>5 RMBS settlement?</p> <p>6 MR. KERR: Objection.</p> <p>7 A. Well, probably a whole lot because</p> <p>8 in this particular Declaration I'm looking at a</p> <p>9 different settlement, two different settlement</p> <p>10 documents. I was analyzing claims that were</p> <p>11 asserted specifically by FGIC here. I certainly</p> <p>12 had an awareness with FGIC claims in the RMBS</p> <p>13 settlement, but it was a broader series of</p> <p>14 claimants that were being considered in the RMBS</p> <p>15 Trust Settlement.</p> <p>16 Q. To your recollection, were you</p> <p>17 addressing the FGIC and the Trustee's claims in</p> <p>18 the RMBS Settlement Declaration?</p> <p>19 A. I believe some of the FGIC wrapped</p> <p>20 trusts were in the RMBS Trust Settlement. I think</p> <p>21 certainly in my Cost and Expense Declaration I did</p> <p>22 talk about the FGIC suits, the 12 different suits</p> <p>23 that have been filed with the securitizations</p> <p>24 being placed at issue.</p> <p>25 But I had different release</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 language and a different Settlement Agreement that</p> <p>3 I was looking at. So, without going back and</p> <p>4 looking at that earlier Declaration I can't see if</p> <p>5 the focus was quite the same because this one has</p> <p>6 specific release language in here with claims that</p> <p>7 are being released by the Trustees and FGIC that I</p> <p>8 looked at for this project.</p> <p>9 Q. And you wouldn't have looked at</p> <p>10 those claims in connection with the RMBS</p> <p>11 settlement project. Is that safe to say?</p> <p>12 MR. KERR: Objection.</p> <p>13 A. I mean, to the extent some of the</p> <p>14 FGIC wrapped trusts were in the RMBS Settlement, I</p> <p>15 would have at least been aware of those. But I</p> <p>16 was looking at the aggregate number. I wasn't</p> <p>17 involved in allocating any specific amounts to any</p> <p>18 particular trust. I was looking at the aggregate</p> <p>19 settlement with the number of trusts that were</p> <p>20 involved over the period of time.</p> <p>21 Q. I think Ms. James had asked you</p> <p>22 earlier in Paragraph 4 of the current Declaration</p> <p>23 that we're looking at, that the legal uncertainty</p> <p>24 and the expense resolution, that those are the two</p> <p>25 primary opinions you're offering in connection</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 with this -- in this Declaration.</p> <p>3 Is that correct?</p> <p>4 MR. KERR: Just so we're clear,</p> <p>5 you're talking about Lipps Exhibit No. 1?</p> <p>6 MR. CARNEY: Yes, Lipps Exhibit</p> <p>7 No. 1.</p> <p>8 A. In Paragraph 4, those two bullet</p> <p>9 points are the overview of my opinions that I'm</p> <p>10 offering in this Declaration.</p> <p>11 Q. And did you offer opinions as to</p> <p>12 legal uncertainty and expense of resolution in the</p> <p>13 RMBS Declaration?</p> <p>14 A. I expect I probably did. Again,</p> <p>15 it's been a while since I've looked at it.</p> <p>16 Q. And can you tell me, was the RMBS</p> <p>17 Declaration admitted as evidence in connection</p> <p>18 with that Settlement Agreement, the RMBS</p> <p>19 settlement?</p> <p>20 MR. KERR: Objection.</p> <p>21 A. I don't think the motion ever went</p> <p>22 to hearing. It was submitted.</p> <p>23 Well, let me take one step back. I</p> <p>24 seem to remember in the RMBS Trust Settlement that</p> <p>25 I also -- that my Declaration in support of the</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 motion to extend stay was re-filed and attached to</p> <p>3 the 9019 motion for the RMBS Trust. And I know</p> <p>4 that was accepted by the Court as evidence. And,</p> <p>5 in fact, in the one contested proceeding related</p> <p>6 to the motion to extend stay, Western Southern,</p> <p>7 the Judge did, in fact, cite favorably and rely on</p> <p>8 some of my conclusions with respect to the expense</p> <p>9 of prosecuting and/or defending these cases.</p> <p>10 MR. CARNEY: Let me mark this</p> <p>11 document as Lipps Exhibit 3. This is the</p> <p>12 Motion in Limine of the Creditors Committee to</p> <p>13 Preclude the Expert Testimony of Jeffrey Lipps</p> <p>14 in Connection With the Debtors' Motion For</p> <p>15 Approval of the RMBS Trust Settlement</p> <p>16 Agreements.</p> <p>17 (Lipps Exhibit 3 marked for</p> <p>18 identification.)</p> <p>19 Q. Have you seen this document before?</p> <p>20 A. I have.</p> <p>21 Q. And can you describe for me what</p> <p>22 your understanding of what this document is?</p> <p>23 A. It's a motion that the Creditors</p> <p>24 Committee filed to preclude me from testifying in</p> <p>25 connection with the RMBS Trust Settlement.</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. And do you recall whether the Court</p> <p>3 ever ruled on this motion?</p> <p>4 A. I don't believe it ever did.</p> <p>5 Q. Can you tell me the context of how</p> <p>6 the -- well, strike that.</p> <p>7 Can you tell me how -- do you have</p> <p>8 any idea why the Court wasn't called to rule on</p> <p>9 this motion?</p> <p>10 MR. KERR: Objection.</p> <p>11 MR. CARNEY: Let me strike that.</p> <p>12 Q. Do you recall why the Court</p> <p>13 wasn't -- why the Court never ruled on this motion</p> <p>14 in limine to exclude your --</p> <p>15 A. You'll have to ask Judge Glen</p> <p>16 (phonetic) that question. I understand it was</p> <p>17 fully briefed. I was preparing to be in</p> <p>18 attendance at the trial when I think a Plan</p> <p>19 Support Agreement -- I may get it wrong -- but</p> <p>20 when a Plan Support Agreement was announced, and</p> <p>21 it was taken off docket. The proceeding was taken</p> <p>22 off docket. I assume that the Judge has many</p> <p>23 other things to do other than rule on a motion</p> <p>24 that's no longer pertinent to a hearing that's</p> <p>25 been cancelled.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. So, is it your understanding the</p> <p>3 reason that this motion in limine was no longer</p> <p>4 pertinent was on account of the Plan Support</p> <p>5 Agreement?</p> <p>6 MR. KERR: Objection.</p> <p>7 A. I don't think I said that. I said</p> <p>8 it was fully briefed. I was preparing to testify,</p> <p>9 and the proceeding was taken off the docket.</p> <p>10 Q. Do you know why the proceeding was</p> <p>11 taken off the docket?</p> <p>12 A. I wasn't involved in any of those</p> <p>13 discussions. I just understand that there were</p> <p>14 various agreements that were reached as part of a</p> <p>15 plan mediation process.</p> <p>16 Q. And why would the fact that those</p> <p>17 agreements were reached have -- in your view,</p> <p>18 would have meant that you no longer needed to</p> <p>19 testify?</p> <p>20 MR. KERR: Objection.</p> <p>21 A. I can't answer that. I just know I</p> <p>22 was told I didn't need to come for a trial.</p> <p>23 Q. And the reason you -- I believe you</p> <p>24 testified the reason that you believe that was</p> <p>25 because, as you said -- were there various</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 agreements that were reached as part of a plan</p> <p>3 mediation process, and that --</p> <p>4 A. That, in my very naive way -- my</p> <p>5 incomplete understanding, because I wasn't</p> <p>6 involved in the plan mediation process. I can't</p> <p>7 even tell you I knew what -- whether complete</p> <p>8 agreements were being reached at that time. I</p> <p>9 just know that the case -- the proceeding on the</p> <p>10 RMBS Trust Settlement was taken off docket.</p> <p>11 Q. But you were never involved in the</p> <p>12 mediation process at all, as you said?</p> <p>13 A. I did not attend mediation, and I</p> <p>14 did not participate in negotiations related to it.</p> <p>15 I would suspect that at various times, as special</p> <p>16 litigation counsel, we were asked to provide some</p> <p>17 information to Morrison &amp; Foerster or some views</p> <p>18 on various things that they may have factored in,</p> <p>19 in the negotiations, but I don't know any</p> <p>20 specifics on that.</p> <p>21 We certainly were continuing to</p> <p>22 work with Morrison &amp; Foerster in dealing with the</p> <p>23 various PLS claims that were out there.</p> <p>24 Q. Do you recall -- can you tell me</p> <p>25 what any of those things were, what any of the</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 information was you were asked to provide?</p> <p>3 MR. KERR: Objection.</p> <p>4 A. No, I don't have any specific</p> <p>5 recall.</p> <p>6 Q. But you were asked to provide</p> <p>7 information regarding the mediation process.</p> <p>8 Is that correct?</p> <p>9 MR. KERR: Objection. That</p> <p>10 mischaracterizes his testimony.</p> <p>11 MR. KAUFMAN: I object also on the</p> <p>12 grounds that the order of the Court prohibits</p> <p>13 disclosure of information relating to the</p> <p>14 mediation process.</p> <p>15 Q. I'm not asking you what information</p> <p>16 you may have been asked to opine on, but were you</p> <p>17 asked to give an opinion with respect to the</p> <p>18 mediation process?</p> <p>19 A. No.</p> <p>20 Q. And if you can flip in the</p> <p>21 Creditors Committee motion in limine, there's a</p> <p>22 deposition transcript in here. I believe it's on</p> <p>23 page 36 of 130 -- no, I'm sorry, 27 of 130.</p> <p>24 Is that the -- does this represent</p> <p>25 the one time that you've been deposed?</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 MR. KERR: Objection. I think this</p> <p>3 is a -- I'm not sure this is a</p> <p>4 complete transcript.</p> <p>5 MR. CARNEY: It's not. It's not.</p> <p>6 It was what was filed with the motion in</p> <p>7 limine.</p> <p>8 Q. But I'm just asking, does this --</p> <p>9 does the --</p> <p>10 A. I think November 19th of 2012 was</p> <p>11 the one and only time before today that I had been</p> <p>12 deposed.</p> <p>13 Q. Have you ever appeared as a witness</p> <p>14 at trial?</p> <p>15 A. It depends on how you define</p> <p>16 "trial." I certainly was present at the extend</p> <p>17 stay proceeding in which my Declaration was</p> <p>18 offered, and I was offered for cross-examination,</p> <p>19 and the other side decide not to cross-examine me.</p> <p>20 Q. Can you tell me what the substance,</p> <p>21 in your view, of that Declaration was?</p> <p>22 A. I believe it's of record. It was</p> <p>23 dealing with the cost and expense associated with</p> <p>24 prosecuting PLS. And it's probably just PLS</p> <p>25 claims. Maybe rep and warranty too.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Because at that time, if I remember</p> <p>3 right, you know, the automatic stay was only</p> <p>4 affecting the Debtors, and there were claims that</p> <p>5 were against AFI, officers and directors, and Ally</p> <p>6 Securities. And motion was made to extend the</p> <p>7 stay to those entities. So, part of the Court's</p> <p>8 consideration was cost and burdens that would be</p> <p>9 associated with allowing those cases to go</p> <p>10 forward.</p> <p>11 Q. And what was your conclusion in</p> <p>12 that Declaration?</p> <p>13 MR. KERR: Objection.</p> <p>14 A. I haven't looked at it in a long</p> <p>15 time. What I remember is that I held a similar</p> <p>16 view, if not identical view, to what I hold today,</p> <p>17 which is these are very complex cases that involve</p> <p>18 and will involve a lot of discovery and a lot of</p> <p>19 expense and burden associated with them.</p> <p>20 And like I said, the Judge was</p> <p>21 asked to rule on one of those cases, the Western</p> <p>22 Southern case, and I think he cited favorably my</p> <p>23 views on the burdens and expense associated with</p> <p>24 defending these cases.</p> <p>25 Q. To your recollection, did anyone</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 oppose the introduction of your Declaration in the</p> <p>3 extend stay matter?</p> <p>4 A. I don't have any memory of anybody</p> <p>5 standing up and objecting to it. Like I said, I</p> <p>6 know at least three of the objectors to that</p> <p>7 motion indicated that they wanted to cross-examine</p> <p>8 me. The Court took a break and two of the three</p> <p>9 wound up resolving their disagreements with the</p> <p>10 Debtors on the motion, and then the one that</p> <p>11 preceded, they decided to forego cross-examining</p> <p>12 me.</p> <p>13 Q. I'm a little confused. I want to</p> <p>14 backtrack.</p> <p>15 Two of them reached an agreement</p> <p>16 with the Debtor on the substance of their</p> <p>17 objection. Is that correct?</p> <p>18 A. On the motion to extend stay.</p> <p>19 Q. And the other didn't reach an</p> <p>20 agreement, but simply declined to cross-examine</p> <p>21 you?</p> <p>22 A. Correct. They went ahead and</p> <p>23 proceeded to argue the motion, and the Judge</p> <p>24 issued an opinion on it.</p> <p>25 Q. But you have no idea why they</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 declined to cross-examine you?</p> <p>3 A. I could speculate, but I won't.</p> <p>4 Q. But no one actively filed any</p> <p>5 pleading or introduced something similar to a</p> <p>6 motion in limine to exclude your Declaration in</p> <p>7 that instance. Is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. To switch gears, have you hired</p> <p>10 experts in the past in your law practice?</p> <p>11 MR. KERR: Objection.</p> <p>12 A. Yes.</p> <p>13 Q. Say in the past five years, in what</p> <p>14 instances can you recall generally that you've</p> <p>15 hired experts?</p> <p>16 A. In the past five years? I couldn't</p> <p>17 even begin to tell you how many experts I've hired</p> <p>18 in the past five years.</p> <p>19 Q. But could you tell me generally why</p> <p>20 you hire experts in your law practice?</p> <p>21 A. Usually it is because they can</p> <p>22 offer opinion testimony that I believe would be a</p> <p>23 benefit to the trier of fact.</p> <p>24 Q. And so, can you give me some</p> <p>25 examples of instances where you have thought that</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the experts that you've hired could assist a trier</p> <p>3 of fact?</p> <p>4 MR. KERR: Objection. In any kind</p> <p>5 of case?</p> <p>6 MR. CARNEY: I'm just saying</p> <p>7 whatever comes to mind.</p> <p>8 Q. Just in your knowledge generally.</p> <p>9 When you hire an expert, in what instances do you</p> <p>10 hire people, which as you testified, can assist a</p> <p>11 trier of fact?</p> <p>12 MR. KERR: Objection.</p> <p>13 Q. What are some instances?</p> <p>14 MR. KAUFMAN: Is this relevant to</p> <p>15 something?</p> <p>16 MR. KERR: Yeah. What's the</p> <p>17 relevance of this?</p> <p>18 MR. CARNEY: I think it's relevant.</p> <p>19 And I don't think relevance is an objection.</p> <p>20 I think he can go ahead and answer.</p> <p>21 MR. KERR: Okay. But it's your</p> <p>22 time. You've got four hours. If you want to</p> <p>23 ask him about unrelated litigation and</p> <p>24 experts, feel free to do so.</p> <p>25 MR. CARNEY: No. In his experience</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 as an attorney.</p> <p>3 MR. KERR: Objection.</p> <p>4 A. I mean, it's -- you know, it's hard</p> <p>5 for me to identify because I'm trying to think</p> <p>6 through all the cases that I've had over the last</p> <p>7 five years, and, you know, I've had different</p> <p>8 situations where I've needed experts. I've had</p> <p>9 cases involving valuation of businesses, and I'll</p> <p>10 bring in an expert to assist in valuing that.</p> <p>11 I had the pre-petition MBIA cases,</p> <p>12 where we felt we wanted to present evidence to the</p> <p>13 trier of fact on certain affirmative defenses, and</p> <p>14 I wanted some opinion testimony related to the due</p> <p>15 diligence or lack thereof by MBIA, and I wanted to</p> <p>16 have expert testimony with respect to what was</p> <p>17 happening in the housing market beginning really</p> <p>18 in mid-2006, but principally what happened in 2008</p> <p>19 and going forward. Those are just some examples.</p> <p>20 Q. Anything else that immediately</p> <p>21 comes to mind?</p> <p>22 A. No.</p> <p>23 Q. So, you said that you had experts</p> <p>24 where you mentioned valuation, the pre-petition</p> <p>25 MBIA cases to present evidence on certain</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 affirmative defenses.</p> <p>3 What kind of evidence on</p> <p>4 affirmative defenses did you seek expert testimony</p> <p>5 in that instance?</p> <p>6 MR. KERR: Objection. Asked and</p> <p>7 answered.</p> <p>8 A. Well, I think I just told you. It</p> <p>9 related to MBIA's diligence or lack thereof, as</p> <p>10 well as providing opinions with respect to the</p> <p>11 housing market crisis and how that impacted</p> <p>12 performance on RMBS securitizations.</p> <p>13 Q. So, then these were experts that</p> <p>14 were opining on matters of fact. Is that correct?</p> <p>15 As I understand it, they were opining on MBIA's</p> <p>16 due diligence and what they did. Is that correct?</p> <p>17 A. Say that again.</p> <p>18 Q. When you hired the</p> <p>19 experts regarding --</p> <p>20 A. I hired one to deal with due</p> <p>21 diligence.</p> <p>22 Q. Right. And so, in connection with</p> <p>23 MBIA's affirmative defenses you hired an expert</p> <p>24 to, say, look at what MBIA did, as far as due</p> <p>25 diligence is concerned. Is that correct?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 MR. KERR: Objection.</p> <p>3 A. I think that was part of the</p> <p>4 information that they had available to me. I</p> <p>5 mean, I can give you another example I just</p> <p>6 thought of. I've represented Nationwide</p> <p>7 Insurance, for example, over the years. I've</p> <p>8 represented GM over the years, as I've said, and</p> <p>9 there have been class actions where there's been</p> <p>10 class action settlements. And typically an expert</p> <p>11 will enter into the case. I've cross-examined a</p> <p>12 couple of them, but they talk about what the risks</p> <p>13 were associated with the litigation. So, I mean,</p> <p>14 I've seen lawyers in the last five years, in the</p> <p>15 context of class actions, come in and testify and</p> <p>16 provide some expertise for the Court on</p> <p>17 uncertainty associated with the claims as they're</p> <p>18 evaluating the fairness of a class action</p> <p>19 settlement.</p> <p>20 Q. And then when you had experts that</p> <p>21 were opining on the housing market, that also was</p> <p>22 a sort of -- a factual point of view of the state</p> <p>23 of the housing market. Is that correct?</p> <p>24 MR. KERR: Objection.</p> <p>25 A. I don't know that that's correct.</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 It's been a while since I looked at it. I think a</p> <p>3 regression analysis was done on it with respect to</p> <p>4 performance of RMBS -- various RMBS</p> <p>5 securitizations, and there was an analysis of some</p> <p>6 of the factual analysis of some of the events that</p> <p>7 were occurring within the housing market, and some</p> <p>8 conclusions that were reached with respect to</p> <p>9 impact of underwriting on the performance of those</p> <p>10 loans or those securitizations.</p> <p>11 Q. But was that expert a lawyer?</p> <p>12 A. I don't think he had a law degree.</p> <p>13 Q. How about the expert that was</p> <p>14 opining on MBIA's due diligence? Was that expert</p> <p>15 a lawyer?</p> <p>16 A. Yes.</p> <p>17 Q. And have you ever hired an expert</p> <p>18 to opine solely on a legal issue?</p> <p>19 A. I don't know that I can answer that</p> <p>20 question because embedded within it is a potential</p> <p>21 objection to that testimony if someone is just</p> <p>22 offering a legal opinion on an ultimate issue in</p> <p>23 the case. It's hard for me to answer that way. I</p> <p>24 have used lawyers to offer opinions on various</p> <p>25 issues that are relevant to various cases, most</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 particularly using a lawyer on the MBIA due</p> <p>3 diligence.</p> <p>4 Q. And what was the subject -- if you</p> <p>5 go a little deeper, what was the subject of that</p> <p>6 expert's testimony? What did he or she testify</p> <p>7 about -- or, actually, strike that.</p> <p>8 Was that expert actually -- did an</p> <p>9 expert testify at trial?</p> <p>10 A. The case was stayed.</p> <p>11 Q. Was there ever an objection to that</p> <p>12 expert's testimony?</p> <p>13 A. No objection was filed prior to the</p> <p>14 stay.</p> <p>15 Q. And that expert was never qualified</p> <p>16 as an expert in the case?</p> <p>17 A. He was clearly qualified.</p> <p>18 Q. Did the Court ever qualify him as</p> <p>19 an expert?</p> <p>20 A. It never got to that, before the</p> <p>21 stay.</p> <p>22 Q. So is it fair to say that whether</p> <p>23 or not -- so that expert was never approved by the</p> <p>24 Court to testify as an expert?</p> <p>25 A. Our expert on MBIA's due diligence</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 was not presented to the Court on a qualification</p> <p>3 challenge prior to the automatic stay going into</p> <p>4 effect.</p> <p>5 Q. And the reason for that was because</p> <p>6 the automatic stay, once the Debtors filed, stayed</p> <p>7 that case?</p> <p>8 A. You would have to ask my opposing</p> <p>9 counsel as to whether or not they ever attempted</p> <p>10 to challenge the credentials of that witness. I</p> <p>11 thought he was very well qualified.</p> <p>12 Q. My question was: The issue of that</p> <p>13 witness's qualification as an expert never came up</p> <p>14 because of the Debtors' bankruptcy filing. Is</p> <p>15 that correct?</p> <p>16 MR. KERR: Objection.</p> <p>17 A. I don't know that they would have</p> <p>18 filed a motion. Your question, as I hear it, is</p> <p>19 assuming that it would have happened but for the</p> <p>20 filing. I don't know that that's the case. I</p> <p>21 don't know that they would have challenged him on</p> <p>22 credentials or the fact that he holds a law</p> <p>23 degree. He was offering opinions on matters that</p> <p>24 were pertinent to the case in my judgment,</p> <p>25 pertinent to our affirmative defense where we had</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the burden.</p> <p>3 Q. But that issue never came up</p> <p>4 because of the automatic stay, though. Correct?</p> <p>5 It never had a chance to come up because of the</p> <p>6 automatic stay?</p> <p>7 MR. KERR: What issue are you</p> <p>8 talking about?</p> <p>9 MR. CARNEY: The witness's</p> <p>10 qualification in the MBIA due diligence expert</p> <p>11 testimony we've been talking about where he</p> <p>12 hired a lawyer.</p> <p>13 Q. My question is: That issue of his</p> <p>14 being qualified or not never had a chance to arise</p> <p>15 because of the automatic stay. Is that correct?</p> <p>16 MR. KERR: Objection.</p> <p>17 A. I don't know that that's true, but</p> <p>18 I think once I tender an expert report, they could</p> <p>19 file a motion if they wanted to.</p> <p>20 Q. So did that expert tender a report</p> <p>21 in that case before the automatic stay took</p> <p>22 effect?</p> <p>23 A. Yes. I think I testified earlier</p> <p>24 that we had submitted expert reports in the first</p> <p>25 round in terms of MBIA's affirmative experts, and</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 I had two affirmative experts on matters that we</p> <p>3 felt we had the burden of proof on as affirmative</p> <p>4 defenses.</p> <p>5 I've been in situations over the</p> <p>6 years where if I get an expert report, sometimes I</p> <p>7 want to challenge it right away if I think there's</p> <p>8 a credential issue or qualification issue rather</p> <p>9 than spending money getting a rebuttal expert on a</p> <p>10 matter that I think I can knock them out. I don't</p> <p>11 think it's fair to conclude that the automatic</p> <p>12 stay was the reason there was no challenge because</p> <p>13 I'm not sure there ever would have been a</p> <p>14 challenge to his credentials.</p> <p>15 Q. Do you always challenge an expert</p> <p>16 report you don't like once it comes across --</p> <p>17 A. There are no alwayses or nevers in</p> <p>18 this business.</p> <p>19 Q. So you may some times; you may not</p> <p>20 other times?</p> <p>21 MR. KERR: Let him answer, then ask</p> <p>22 your question, all right, so the reporter can</p> <p>23 get it down and I have time to object. What's</p> <p>24 your question?</p> <p>25 Q. My question was: You testified</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 that sometimes you challenge an expert report as</p> <p>3 soon as it comes across your desk.</p> <p>4 A. That is one strategic decision that</p> <p>5 you could make to challenge an expert's</p> <p>6 credentials or even scope of testimony.</p> <p>7 Q. But you don't always do that. Is</p> <p>8 that correct?</p> <p>9 A. No, I don't always do that when the</p> <p>10 other side submits an expert report.</p> <p>11 Q. Even if you plan to challenge in</p> <p>12 the future?</p> <p>13 A. I don't think you waive anything by</p> <p>14 waiting until a later point in a case with respect</p> <p>15 to an expert to challenge him.</p> <p>16 Q. So it's a strategic decision?</p> <p>17 A. As to whether to challenge</p> <p>18 credentials and when to challenge credentials, I</p> <p>19 would agree that's the strategic decision.</p> <p>20 Q. I may have asked this, but I don't</p> <p>21 think I asked it quite in this context.</p> <p>22 Have you ever been qualified as an</p> <p>23 expert witness before?</p> <p>24 MR. KERR: Objection.</p> <p>25 A. Well, I offered opinion testimony,</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 like I said, in connection with the extend stay.</p> <p>3 But in terms of actually having a Court say</p> <p>4 "you're qualified," other than that situation, I</p> <p>5 don't think I've ever served as an expert,</p> <p>6 frankly, before.</p> <p>7 Q. And other than the creditors</p> <p>8 committee's motion in limine to exclude your RMBS</p> <p>9 declaration we've been discussing, has any expert</p> <p>10 opinion that you've offered ever been criticized,</p> <p>11 questioned or objected to --</p> <p>12 MR. KERR: Objection. By any party</p> <p>13 or litigant?</p> <p>14 MR. CARNEY: Start with any party.</p> <p>15 A. Well, you could -- it's been a</p> <p>16 while since I looked at what the objections were</p> <p>17 to the motion to extend stay. As I sit here right</p> <p>18 now, I can't tell you whether somebody was saying</p> <p>19 these are really inexpensive to defend. I would</p> <p>20 be surprised if somebody took that strong of a</p> <p>21 position. That would be the only context that I</p> <p>22 would think of prior to the motion being filed by</p> <p>23 the creditors committee.</p> <p>24 Q. And has any court ever criticized</p> <p>25 any expert testimony that you've offered?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I don't think I've ever been</p> <p>3 criticized by any court in anything I've done on</p> <p>4 behalf of a client or a party.</p> <p>5 Q. Has a Court ever written about any</p> <p>6 expert testimony you've ever offered?</p> <p>7 MR. KERR: Objection.</p> <p>8 A. No -- well, again, other than the</p> <p>9 decision that Judge Glen had on the Western and</p> <p>10 Southern extend stay. I believe he cited</p> <p>11 extensively from my declaration.</p> <p>12 Q. And do you plan on testifying at</p> <p>13 the hearing on the motion to approve the --</p> <p>14 A. Let me just add one other thing. I</p> <p>15 believe, I can't remember -- well, it would have</p> <p>16 been post-petition. I believe I filed a</p> <p>17 declaration, maybe two, in the FHFA case related</p> <p>18 to some burden and cost issues associated with</p> <p>19 discovery of the Debtors in connection with the</p> <p>20 prosecution of those cases.</p> <p>21 Q. Can you describe for me --</p> <p>22 MR. KERR: Are you finished?</p> <p>23 THE WITNESS: Yes. I just wanted</p> <p>24 to give you a complete -- that just sprung to</p> <p>25 memory that I think I did that.</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. Well, can you tell me -- when you</p> <p>3 say "with discovery of the Debtors," what -- can</p> <p>4 you tell me the substance of what you were --</p> <p>5 well, was that -- were you submitting the</p> <p>6 declaration as an expert in that instance or a</p> <p>7 fact witness?</p> <p>8 A. I was offering opinion testimony</p> <p>9 with respect to the burdens that would be placed</p> <p>10 upon the Debtors were they to comply with</p> <p>11 discovery requests that were being directed to the</p> <p>12 Debtors by FHFA. Specifically my recollection is</p> <p>13 loan files.</p> <p>14 Q. And were you ever called to testify</p> <p>15 with respect to that opinion that you put in?</p> <p>16 A. I never got up on a witness stand.</p> <p>17 I certainly had some conversations with Judge Code</p> <p>18 at various times either on telephone conferences</p> <p>19 or perhaps at one of the proceedings related to</p> <p>20 the opinions that I had and the burden.</p> <p>21 Q. Were you ever deposed with respect</p> <p>22 to those?</p> <p>23 A. No.</p> <p>24 Q. And did anyone ever object to the</p> <p>25 submission of those declarations?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. Not to my recollection.</p> <p>3 Q. But that was -- but those</p> <p>4 declarations purely, as I understand, had to do</p> <p>5 with the burden to the Debtors of complying with</p> <p>6 the FHFA discovery requests. Is that correct?</p> <p>7 A. I think that was the specific</p> <p>8 issue. Again, its been a while since I've looked</p> <p>9 at that, but I think I had a more robust</p> <p>10 discussion on discovery in general that could be</p> <p>11 associated with the prosecution by FHFA of those</p> <p>12 claims and how that would burden the state based</p> <p>13 on my experience in defending these cases through</p> <p>14 discovery.</p> <p>15 Q. And what were those claims of the</p> <p>16 FHFA?</p> <p>17 A. I believe they had some Securities</p> <p>18 Act claims, both federal and perhaps state, and I</p> <p>19 think they had a common law fraud claim. The</p> <p>20 foundation was that there were misrepresentations</p> <p>21 in the prospectus associated with those offerings</p> <p>22 and typically they targeted on exactly the same</p> <p>23 type issues that would arise in the context of rep</p> <p>24 and warranties, specifically underwriting</p> <p>25 challenges, appraisal challenges. I think those</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 are the two big ones. Maybe occupancy was another</p> <p>3 one that, I think, FHFA was focusing on.</p> <p>4 Q. So in the FHFA declarations that</p> <p>5 you said you submitted, did any part -- did that</p> <p>6 declaration -- how many declarations did you</p> <p>7 submit in connection with that?</p> <p>8 A. I can recall one, but I'm -- there</p> <p>9 may have been two, but I do recall one.</p> <p>10 Q. And did you do an analysis similar</p> <p>11 to the one in the declaration marked as Lipps</p> <p>12 Exhibit 1 in that declaration?</p> <p>13 MR. KERR: Objection.</p> <p>14 A. I certainly offer an opinion</p> <p>15 related to the expenses associated with the</p> <p>16 discovery. As part of that, I brought forth the</p> <p>17 basis for my opinion, which would have involved</p> <p>18 experiences in defending these cases and having an</p> <p>19 understanding of how generally discovery would</p> <p>20 proceed in these kinds of claims involving the</p> <p>21 issues that were being asserted by FHFA.</p> <p>22 Q. And did you discuss the merits of</p> <p>23 those claims of the FHFA?</p> <p>24 A. No, I did not offer any opinions on</p> <p>25 the merits of the claims or risks associated with</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 it. It was simply discovery based.</p> <p>3 Q. So it was an opinion of the cost of</p> <p>4 the discovery process in litigating the claims</p> <p>5 FHFA had brought?</p> <p>6 MR. KERR: Objection. Asked and</p> <p>7 answered.</p> <p>8 A. It's been a while since I looked at</p> <p>9 it. I can't remember whether I used the word</p> <p>10 "cost" or "burden" or both, but it was clearly</p> <p>11 focused on discovery-related activities and what</p> <p>12 an imposition it would be on the debtor at that</p> <p>13 point in the reorganization process.</p> <p>14 Q. And do you recall what your</p> <p>15 conclusions were?</p> <p>16 A. I think it was that discovery would</p> <p>17 be burdensome.</p> <p>18 Q. How burdensome?</p> <p>19 MR. KERR: Objection.</p> <p>20 A. I can't remember.</p> <p>21 Q. Enough to cause them to liquidate?</p> <p>22 A. No.</p> <p>23 Q. So not that bad, but something --</p> <p>24 MR. KERR: Objection.</p> <p>25 A. Well, the entity was in</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 reorganization at the time. It had filed. And in</p> <p>3 an environment of limited resources and demands</p> <p>4 that were placed on the personnel that existed at</p> <p>5 the company, in my view, as I recall, was it would</p> <p>6 be burdensome and it would be distracting to the</p> <p>7 reorganization process to engage the type of</p> <p>8 people and the resources that would be associated</p> <p>9 with both the FHFA discovery and the general</p> <p>10 defense of those cases.</p> <p>11 Q. And do you recall what the outcome</p> <p>12 of that issue was?</p> <p>13 A. I knew you were going to ask me</p> <p>14 that. I just barely remember, as you know, the</p> <p>15 declaration.</p> <p>16 I seem to remember that there was a</p> <p>17 negotiated resolution of it, and it got a little</p> <p>18 more complicated because there was the shared</p> <p>19 services agreement between the Debtors and Ally</p> <p>20 Financial, and Ally Financial was also a defendant</p> <p>21 in the case. So there were unique to Ally</p> <p>22 Financial possession, custody and control issues</p> <p>23 and whether or not the Shared Services Agreement</p> <p>24 gave them an outlet to get to the loan files.</p> <p>25 What I was looking at it from was</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the pure perspective of if the Debtors had to do</p> <p>3 it. And I think ultimately that there was a</p> <p>4 resolution to it, but I could be wrong.</p> <p>5 Q. But, to your knowledge, the Court</p> <p>6 never opined on the issue?</p> <p>7 A. I think she probably opined on it.</p> <p>8 I just can't remember what it was.</p> <p>9 Q. She never issued a formal opinion?</p> <p>10 A. What I remember is she said go ask</p> <p>11 the -- in the context, generally, I think she told</p> <p>12 the FHFA to go ask for a lift stay from Judge Glen</p> <p>13 and then depending on your level of satisfaction</p> <p>14 from that, come back to me. And there may have</p> <p>15 been some context in which she withdrew some</p> <p>16 reference associated with it. And I think it may</p> <p>17 actually be on appeal right now to the Second</p> <p>18 Circuit, some aspect of that. That's the best</p> <p>19 memory that I can give you right now. I haven't</p> <p>20 gone back and looked at it in probably a year.</p> <p>21 Q. But, again, the issue you're being</p> <p>22 qualified as an expert and you're testifying to</p> <p>23 those declarations never came up. That's correct,</p> <p>24 right?</p> <p>25 MR. KERR: Objection.</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. They were submitted, and they were</p> <p>3 never stricken.</p> <p>4 Q. Did anyone ever move to strike</p> <p>5 them?</p> <p>6 A. Not that I know of.</p> <p>7 Q. Do you plan on testifying at the</p> <p>8 hearing on the FGIC settlement?</p> <p>9 A. I think I'll have to rely on my</p> <p>10 counsel to decide that. I suspect that my</p> <p>11 testimony will be offered.</p> <p>12 Q. And, to your knowledge, will the</p> <p>13 declaration marked as Lipps Exhibit 1, will that</p> <p>14 be the -- to your understanding, be your direct</p> <p>15 testimony for the hearing on the 9019 motion on</p> <p>16 the FGIC settlement motion?</p> <p>17 MR. KERR: Objection.</p> <p>18 A. Again, it's hard for me to predict.</p> <p>19 I know in the RMBS trust settlement, I think I</p> <p>20 filed a supplemental declaration. There may be</p> <p>21 issues that counsel asked me to look at as the</p> <p>22 case continues to develop that may be outside or</p> <p>23 an expansion of what's in my declaration. I can't</p> <p>24 predict at that point.</p> <p>25 Q. Let's take out your declaration,</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 which, I believe, is Exhibit 1. Can you -- we</p> <p>3 have the first two bullet points that we</p> <p>4 discussed, Legal Uncertainty and Expense Of</p> <p>5 Resolution.</p> <p>6 Can you point out to me in your</p> <p>7 declaration where else your opinions are</p> <p>8 expressed?</p> <p>9 A. Well, I'm sure at various points I</p> <p>10 had opinion statements throughout the entire</p> <p>11 discussion. This was intended to be a summary,</p> <p>12 and there may have been something at the</p> <p>13 conclusion.</p> <p>14 Q. I understand that this may is a</p> <p>15 summary. What I'm trying to get at is what points</p> <p>16 in this declaration actually set forth your</p> <p>17 opinion on the 9019 motion?</p> <p>18 MR. KERR: Objection.</p> <p>19 A. I think the entirety of it does.</p> <p>20 Q. Well, there's recitations of fact.</p> <p>21 You say, in paragraph 16, say with FGIC, as a</p> <p>22 credit enhancer, typically would have done. I</p> <p>23 don't see that as an opinion. What I want to get</p> <p>24 at is where are you expressing these opinions that</p> <p>25 are set forth in these two bullet points. I want</p>



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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 to get to the actual paragraphs where you're</p> <p>3 taking what you summarize here. So if you want to</p> <p>4 go through it, we can take a break, but that's</p> <p>5 what I'd like to know.</p> <p>6 MR. KAUFMAN: He just told you that</p> <p>7 the entirety of it was supportive of the</p> <p>8 summary at the outset. What more do you want</p> <p>9 him to tell you?</p> <p>10 MR. CARNEY: Tell me the paragraphs</p> <p>11 that actually set forth his independent</p> <p>12 analysis, what his opinion is.</p> <p>13 A. It begins in paragraph 15 and</p> <p>14 continues all the way through on the two issues</p> <p>15 through paragraph 149. In order to offer</p> <p>16 opinions, I have to do some analysis, I have to do</p> <p>17 some review, and what I've done throughout this is</p> <p>18 I've let the reader know in the declaration how</p> <p>19 I've reached the conclusions I've reached and what</p> <p>20 my thought process was and what various matters I</p> <p>21 took into account. So I can't segregate it the</p> <p>22 way you want it. The entirety of it is my opinion</p> <p>23 and what I base it on.</p> <p>24 Q. You did segregate it. You said it</p> <p>25 through your entire opinion what you base it on.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 I know that you base your opinions on certain</p> <p>3 facts. What I'd like to go to is what those</p> <p>4 opinions are. You have mostly recitations of the</p> <p>5 law, the state of the law, and that sort of thing.</p> <p>6 What I want to get to is where is your actual</p> <p>7 opinion based on those background facts that</p> <p>8 you've accumulated? Where are those in this</p> <p>9 document?</p> <p>10 MR. KERR: Objection. Asked and</p> <p>11 answered. You've been asking him about the</p> <p>12 opinions in paragraph 4 that are summarized</p> <p>13 there, and he's told you that the entire</p> <p>14 declaration supports those. I don't</p> <p>15 understand what you're asking about.</p> <p>16 MR. KAUFMAN: Do you want to know</p> <p>17 if the word "opinion" appears somewhere in the</p> <p>18 document?</p> <p>19 MR. CARNEY: No.</p> <p>20 MR. KAUFMAN: The document speaks</p> <p>21 for itself. You're wasting all of our time</p> <p>22 with these questions, you really are.</p> <p>23 MR. CARNEY: Well, I have my four</p> <p>24 hours.</p> <p>25 MR. KAUFMAN: You're not entitled</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 to simply waste time.</p> <p>3 MR. CARNEY: I don't think I'm</p> <p>4 wasting time.</p> <p>5 Q. What I'm asking for is other than a</p> <p>6 recitation of the current state of the law and a</p> <p>7 recitation of the facts that you've accumulated,</p> <p>8 other than those two bullet points where is your</p> <p>9 actual opinion stated here? That's all I want to</p> <p>10 get at.</p> <p>11 A. The summary of it is in page 2, in</p> <p>12 the two bullets in paragraph 4. And throughout</p> <p>13 the analysis, I am reaching various conclusions</p> <p>14 and offering opinions that are summarized in those</p> <p>15 two bullets. You have the entirety of what I've</p> <p>16 written here to review. I can't say that there's</p> <p>17 any specific opinion versus analysis. It's -- the</p> <p>18 entirety of my opinion is in this report.</p> <p>19 Q. Okay. So let me go through this</p> <p>20 then. Other than cases that you've accumulated</p> <p>21 through research, other than facts that you've</p> <p>22 either researched or have been given to you, other</p> <p>23 than facts and the law, how is this an opinion and</p> <p>24 not a legal brief? That's my question.</p> <p>25 MR. KERR: Objection.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I've offered opinions on the legal</p> <p>3 uncertainty associated with the claims that are</p> <p>4 being released in the FGIC settlement, and I've</p> <p>5 offered opinions with respect to the expensive</p> <p>6 resolution. In connection with those, I brought</p> <p>7 to the table my direct experience with the</p> <p>8 Debtors. Both in terms of understanding their</p> <p>9 specific facts and how that contributes to legal</p> <p>10 uncertainty and how those specific facts</p> <p>11 distinguish it from -- or potentially distinguish</p> <p>12 it from other results, other cases. And I brought</p> <p>13 the specific experience on the expense of</p> <p>14 resolution.</p> <p>15 So I think this is about as far</p> <p>16 from a legal brief, frankly, as one can be.</p> <p>17 Certainly I had to make observations in order to</p> <p>18 assess the legal uncertainty of what the elements</p> <p>19 were to a cause of action and make a determination</p> <p>20 in order to offer an opinion whether there was a</p> <p>21 dispositive all-encompassing ruling or whether</p> <p>22 there were various outcomes, various results at</p> <p>23 any of those issue points. So that's what the</p> <p>24 entirety of this declaration is intended to</p> <p>25 present.</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. So if I hear you correctly, and</p> <p>3 correct me if I am wrong, you testified just now</p> <p>4 that you brought -- as I hear it, you brought two</p> <p>5 things to the table: Your direct experience with</p> <p>6 the Debtors, correct, and your experience as an</p> <p>7 attorney with respect to the expense of</p> <p>8 litigation?</p> <p>9 MR. KERR: Objection. Asked and</p> <p>10 answered.</p> <p>11 Q. Is that correct?</p> <p>12 MR. KERR: Objection. Asked and</p> <p>13 answered. Mischaracterizes his testimony.</p> <p>14 A. I've set forth in the section</p> <p>15 beginning on page 2 my qualifications, and I don't</p> <p>16 think that it's limited entirely to those two</p> <p>17 issues.</p> <p>18 Q. Okay. What else is there besides</p> <p>19 those two, those are the two that you mentioned,</p> <p>20 other than legal analysis and factual background?</p> <p>21 MR. KERR: Objection.</p> <p>22 Mischaracterizes his testimony. Go back and</p> <p>23 read his testimony, Mike. Come on.</p> <p>24 MR. CARNEY: I did. So I'm asking</p> <p>25 him.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. Other than those two things, what</p> <p>3 else? Just let me know.</p> <p>4 MR. KERR: Objection.</p> <p>5 A. Do you want me to read through the</p> <p>6 qualifications for you? Look, I've been</p> <p>7 litigating RMBS-related claims since 2010 for the</p> <p>8 Debtors, former officers and directors, and</p> <p>9 certain affiliated non-Debtor entities. I've been</p> <p>10 a litigator in commercial matters for 32 years. I</p> <p>11 understand as a result of that experience how</p> <p>12 cases proceed from filing to ultimate disposition</p> <p>13 either by way of settlement or trial with appeals</p> <p>14 involved in it. You have to take it into account</p> <p>15 when you're trying to assess legal uncertainties.</p> <p>16 I have firsthand experience in</p> <p>17 litigating in the RMBS context for the Debtors a</p> <p>18 number of the issues that are presented in my</p> <p>19 analysis. I've looked at what other courts have</p> <p>20 done in other cases on those issues. I've tried</p> <p>21 to understand what the distinctions were between</p> <p>22 them, and I can only do that by virtue of my</p> <p>23 experience as a litigator and my experience as</p> <p>24 somebody specifically on this.</p> <p>25 I've looked at and lived with for</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 years many of the governing documents or governing</p> <p>3 agreements that tend to be similar from</p> <p>4 securitization to securitization. I've had to</p> <p>5 deal with -- since being appointed as special</p> <p>6 counsel, I've had to deal with the various proofs</p> <p>7 of claim that have been filed and assessing those.</p> <p>8 Q. So other than being a lawyer, what</p> <p>9 specialized knowledge do you have that's going to</p> <p>10 assist the trier of fact?</p> <p>11 MR. KERR: Objection. Just asked</p> <p>12 and just answered.</p> <p>13 A. I can't do any better than I've</p> <p>14 just given you.</p> <p>15 Q. We'll come back to that.</p> <p>16 How do you think in this sense that</p> <p>17 you're actually going to assist the trier of fact</p> <p>18 in deciding whether the 9019 motion meets the</p> <p>19 standard for approval under bankruptcy Rule 9019?</p> <p>20 MR. KERR: Objection.</p> <p>21 A. How do you think I'm going to</p> <p>22 assist?</p> <p>23 Q. Yes.</p> <p>24 A. I'm going to offer my opinions and</p> <p>25 hopefully he'll find me credible, and the judge</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 will concur with him. He certainly has, in the</p> <p>3 context of the motion to extend stay, found my</p> <p>4 views on burden and expense to be a value to him</p> <p>5 as he analyzed that issue.</p> <p>6 Q. So you're going to offer your</p> <p>7 opinion then from declaration from your previous</p> <p>8 testimony. You're going to offer your opinion on</p> <p>9 the state of the law. Correct?</p> <p>10 MR. KAUFMAN: His opinion --</p> <p>11 MR. KERR: His opinion is stated in</p> <p>12 the declaration.</p> <p>13 MR. KAUFMAN: It's not that he's</p> <p>14 going to offer it. He has offered it in</p> <p>15 Exhibit 1.</p> <p>16 Q. Again, if called to assist a trier</p> <p>17 of fact, you're going to offer through your</p> <p>18 declaration, one, your opinion on the state of the</p> <p>19 law. Is that correct?</p> <p>20 MR. KERR: Objection.</p> <p>21 A. I don't think that's what I'm</p> <p>22 doing. I think what I'm doing is assessing the</p> <p>23 legal uncertainty associated with the claims that</p> <p>24 are being resolved in the FGIC settlement.</p> <p>25 Q. And to do that --</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. To do that you need to survey the</p> <p>3 law and -- the decisions and the state of the law,</p> <p>4 and just the infancy stage of it without the</p> <p>5 appellate rulings on these, depending on state</p> <p>6 law, I mean, there's a whole a lot of things that</p> <p>7 contribute to risk associated with prosecuting or</p> <p>8 defending these claims and contributing to the</p> <p>9 uncertainty of it.</p> <p>10 So that's what I've tried to</p> <p>11 articulate in my declaration, and I would expect</p> <p>12 that if my counsel asked me to testify either by</p> <p>13 written direct testimony or from the witness</p> <p>14 stand, I would offer the same opinions that I've</p> <p>15 put in my declaration and amplify as they feel is</p> <p>16 appropriate based on how they question me.</p> <p>17 Q. So in your declaration then, that</p> <p>18 you are -- that you may offer as your direct</p> <p>19 testimony, your opinion is based on, to begin</p> <p>20 with, the state of the law? I keep getting</p> <p>21 objections to that.</p> <p>22 MR. KERR: You know what? And I'm</p> <p>23 going to object to that because you're now</p> <p>24 trying to -- you're not reading his opinions.</p> <p>25 You're trying to characterize the way you've</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 asked and answered that. He's answer the</p> <p>3 question. You want to ask him again, he can</p> <p>4 keep doing this all day long, but your four</p> <p>5 hours are being used, Mike. You've asked your</p> <p>6 question. He' answer your question several</p> <p>7 times now. This is a waste.</p> <p>8 MR. CARNEY: I want him to break --</p> <p>9 Q. Can you break your -- then can you</p> <p>10 tell me, can you break down your declaration into</p> <p>11 different discreet bullet points of what you've</p> <p>12 done, please? I already established that you've</p> <p>13 analyzed the law. That's one point.</p> <p>14 What else have you done?</p> <p>15 MR. KERR: Objection.</p> <p>16 Mischaracterizes his testimony. Go back and</p> <p>17 read his testimony. If you have got a</p> <p>18 question about specific parts of his</p> <p>19 declaration, feel free to ask him, but don't</p> <p>20 mischaracterize his testimony, Mike. Don't do</p> <p>21 that.</p> <p>22 MR. CARNEY: I'm asking him to give</p> <p>23 me in subject matter headings what he did,</p> <p>24 what his opinion is based on.</p> <p>25 A. It's in the declaration.</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. Then why can't you tell me?</p> <p>3 MR. KERR: He just did.</p> <p>4 MR. CARNEY: No, he didn't.</p> <p>5 A. You can sit there and see. There's</p> <p>6 a summary section to help the reader understand</p> <p>7 what the summary is of my opinion. I go through</p> <p>8 qualifications. I then go through an overview of</p> <p>9 potential claims.</p> <p>10 Q. Okay.</p> <p>11 MR. KERR: Let him finish.</p> <p>12 A. Let me finish.</p> <p>13 Q. All right.</p> <p>14 A. Elements of cause of action</p> <p>15 focusing on the scope of the reps and warranties</p> <p>16 generally in those cases or in the documents, and</p> <p>17 that goes on for several pages. Then I have an</p> <p>18 analysis a little deeper of some of the elements</p> <p>19 of a cause of action starting with existence of a</p> <p>20 breach, and I identify a number of issues that are</p> <p>21 relevant to that breach that, in my experience, in</p> <p>22 defending these cases, as well as knowledge of</p> <p>23 other cases that are progressing that come up.</p> <p>24 And we go to the materiality of a breach. We've</p> <p>25 got causation, harm and damages, go through some</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 of the defenses that are out there that create</p> <p>3 risk and uncertainties, the statute of</p> <p>4 limitations, plaintiff's due diligence, and the</p> <p>5 housing crisis defense.</p> <p>6 There's some other intervening</p> <p>7 causes that are associated with the nature of the</p> <p>8 loans that can cause or contribute to defaulting</p> <p>9 of loans that would be unrelated to underwriting</p> <p>10 issues, as well as things you can't underwrite</p> <p>11 for, like loss of job or death of a spouse or</p> <p>12 other sicknesses that I've called and identified</p> <p>13 as intervening causes that affect the risk and</p> <p>14 uncertainty associated with these cases.</p> <p>15 Identified some evidentiary issues. Identified</p> <p>16 some other litigation that's been going on and</p> <p>17 resulted in resolution, and then I have a whole</p> <p>18 section that deals with cost of litigating these</p> <p>19 claims and how FGIC's claims will be costly.</p> <p>20 MR. CARNEY: Can we take a quick</p> <p>21 break?</p> <p>22 (Recess taken.)</p> <p>23 Q. Let's quickly flip back to your</p> <p>24 Declaration and then we can move on.</p> <p>25 MR. KERR: You're talking about</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Exhibit 1?</p> <p>3 MR. CARNEY: Yes, Lipps Exhibit 1.</p> <p>4 Q. I think before we left you just</p> <p>5 flipped through it and discussed kind of the</p> <p>6 subject headings of what it contained. And I</p> <p>7 think we had, to begin, a summary of the -- called</p> <p>8 Summary of Testimony, which that's a summary of</p> <p>9 the opinion you're offering. Is that correct?</p> <p>10 A. That was what I intended to do in</p> <p>11 that section.</p> <p>12 Q. And some of your qualifications.</p> <p>13 That describes your career and your history in</p> <p>14 these cases. Is that correct?</p> <p>15 MR. KERR: Objection.</p> <p>16 A. My intention in this section was to</p> <p>17 provide information that I felt was pertinent to</p> <p>18 my qualification to offer the opinions I was going</p> <p>19 to offer.</p> <p>20 Q. Now, in the overview of potential</p> <p>21 claims, other than legal analysis, does anything</p> <p>22 in this section express your independent opinion?</p> <p>23 MR. KERR: Objection.</p> <p>24 A. Well, it's all part of my</p> <p>25 independent opinion. I've just simply called out</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 a section of the Declaration and identified for</p> <p>3 the reader what I wanted to talk about in that</p> <p>4 section.</p> <p>5 Q. And what did you want to talk about</p> <p>6 in that section?</p> <p>7 A. An overview of the potential</p> <p>8 claims.</p> <p>9 Q. And how did you come by that</p> <p>10 knowledge?</p> <p>11 A. By looking at the FGIC Settlement</p> <p>12 Agreement, looking at the claims that were going</p> <p>13 to be released in that Settlement Agreement, by</p> <p>14 bringing to the process my experience in</p> <p>15 defending, however brief it was, against the</p> <p>16 complaints that had been filed by FGIC, as well as</p> <p>17 the proofs of claim that had been filed by FGIC</p> <p>18 and the Trustees, and also bringing to the table</p> <p>19 my experience in the types of claims that had been</p> <p>20 asserted in these -- in the rep and warranty</p> <p>21 context.</p> <p>22 Q. And in the section "Elements of</p> <p>23 Cause of Action," beginning with Paragraph 24,</p> <p>24 where is your independent opinion expressed, other</p> <p>25 than in this section?</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 MR. KERR: Objection.</p> <p>3 A. The Declaration, in its entirety,</p> <p>4 is my opinion, and the basis for it. In this</p> <p>5 section what I wanted to provide to the reader was</p> <p>6 a discussion of the elements of the causes of</p> <p>7 action with FGIC and/or the trustees have asserted</p> <p>8 in pre-petition litigation and proofs of claim,</p> <p>9 and/or might assert in the context of a</p> <p>10 prosecution of these claims.</p> <p>11 Q. And how did you come by the</p> <p>12 knowledge that you put forth in this section?</p> <p>13 A. Based on my review of the</p> <p>14 pre-petition litigation that I was defending on</p> <p>15 behalf of the Debtors brought by FGIC, as well as</p> <p>16 litigation brought by other credit enhancers</p> <p>17 and/or investors, an analysis of the proofs of</p> <p>18 claim, and my experience in defending these cases,</p> <p>19 and knowledge of what types of elements were</p> <p>20 necessary to be proven either to prosecute a claim</p> <p>21 or to defend against it.</p> <p>22 Q. And would you agree that the</p> <p>23 knowledge of what types of elements were necessary</p> <p>24 to be proven either to prosecute a claim or defend</p> <p>25 against it is essentially a legal analysis?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 MR. KERR: Objection.</p> <p>3 A. Well, I would agree that elements</p> <p>4 of cause of action are either part of a statutory</p> <p>5 cause of action or based on common law decisional</p> <p>6 authority. So, to that extent, yeah, there is an</p> <p>7 identification of legal issues, but, you know, as</p> <p>8 far as the elements, I think you have to be able</p> <p>9 to break down the complaint and the proofs of</p> <p>10 claim, as any litigator would, to try and assess</p> <p>11 where they're going to have to put on evidence and</p> <p>12 then understand what the risks are and uncertainty</p> <p>13 associated with being able to prove those</p> <p>14 elements. And then the same with defenses.</p> <p>15 Q. And when you say the same with</p> <p>16 defenses, would your answer change with respect to</p> <p>17 the additional defenses section beginning on page</p> <p>18 37?</p> <p>19 MR. KERR: Objection. I don't</p> <p>20 understand the question.</p> <p>21 A. I guess I don't understand it</p> <p>22 either. You're asking me if my answer would</p> <p>23 change?</p> <p>24 Q. Yes, with respect to the additional</p> <p>25 defenses section, as opposed to the elements of</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 cause of action section.</p> <p>3 MR. KERR: Objection.</p> <p>4 A. Well, what I did in the additional</p> <p>5 defenses section was, again, identify a number of</p> <p>6 defenses that I have asserted in defending against</p> <p>7 these claims, as well as defenses that others have</p> <p>8 asserted in other cases, to my knowledge. And</p> <p>9 then what I did was, again, assess whether there</p> <p>10 was certainty on resolution of those issues. And</p> <p>11 I think almost to an issue I concluded that there</p> <p>12 was uncertainty and risks associated with banking</p> <p>13 your case on a particular affirmative defense.</p> <p>14 Q. How did you come by knowledge of</p> <p>15 those defenses listed in that section?</p> <p>16 A. Well, I actually asserted those</p> <p>17 defenses in defending the Debtors in rep and</p> <p>18 warranty cases that were brought by MBIA. And as</p> <p>19 I indicated earlier, at least for two of those</p> <p>20 defenses I had expert opinions being offered on</p> <p>21 those defenses. I've also -- I'm aware of other</p> <p>22 litigation defended by other law firms in which</p> <p>23 some variation of those defenses have been</p> <p>24 asserted.</p> <p>25 Q. And did you assert those defenses</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 in legal pleadings that you just mentioned?</p> <p>3 A. I didn't do the answer in the RFC</p> <p>4 case. I think my predecessor counsel did it. I</p> <p>5 may have done an answer to the amended complaint.</p> <p>6 If I did do the answer to the amended complaint,</p> <p>7 I'm pretty certain that I asserted the housing</p> <p>8 crisis defense, as well as a lack of due diligence</p> <p>9 because you can debate on whether in a fraud case</p> <p>10 justifiable reliance is something that the</p> <p>11 plaintiff has to prove the absence -- actual --</p> <p>12 whether they justifiably relied on it or whether I</p> <p>13 have the burden, as the defendant, to demonstrate</p> <p>14 that they could not have justifiably relied on it.</p> <p>15 So, in that area of uncertainty I typically do</p> <p>16 assert that defense in the pleading.</p> <p>17 In the GMAC Mortgage case we</p> <p>18 probably did put it in as an affirmative defense.</p> <p>19 Q. And then the outcomes in other</p> <p>20 monoline litigation section. How did you come by</p> <p>21 the -- strike that.</p> <p>22 What was your objective in this</p> <p>23 section?</p> <p>24 A. Well, in this section -- I mean, it</p> <p>25 is a fact that there have been a number of these</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 RMBS type cases that have settled. And what I was</p> <p>3 doing in this section was taking advantage of what</p> <p>4 public information was available out there to</p> <p>5 record the settlements that I was aware of.</p> <p>6 Again, it's incomplete information.</p> <p>7 And as I discussed earlier, you can't</p> <p>8 mathematically reach a conclusion on percentages</p> <p>9 that were involved in these, but what I was trying</p> <p>10 to demonstrate is that these did not appear to me</p> <p>11 to be nuisance type settlements. And, in fact,</p> <p>12 they were settlements that would have been part of</p> <p>13 a recognition by the settling parties that there</p> <p>14 was significant risk for both sides on the claims,</p> <p>15 and a resolution was reached.</p> <p>16 So, what that did is corroborate my</p> <p>17 view that there is substantial uncertainty here,</p> <p>18 and there's a certain measure of significant risk</p> <p>19 associated with it from a legal elements and proof</p> <p>20 standpoint. You know, I later talk about how the</p> <p>21 expense factors into it.</p> <p>22 Q. And so, is it fair to say that the</p> <p>23 cases that you cite in this section, "Outcomes In</p> <p>24 Other Monoline Litigations," actually are -- the</p> <p>25 reported cases and the cases you've been able to</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 locate to date actually favor the monoline</p> <p>3 insurers?</p> <p>4 MR. KERR: Objection.</p> <p>5 A. No, I don't think I reached that</p> <p>6 conclusion.</p> <p>7 Q. Do you cite a case in this section,</p> <p>8 "Outcomes and Other Monoline Litigations," that</p> <p>9 you view as an outcome unfavorable to the monoline</p> <p>10 insurers?</p> <p>11 A. I don't think you can reach a</p> <p>12 conclusion favorable or unfavorable by looking at</p> <p>13 these settlements. I think what you see is</p> <p>14 settlements that are above nuisance value. So,</p> <p>15 both parties were recognizing some risk of an</p> <p>16 uncertain outcome associated with it, and they, in</p> <p>17 the context of their individual claims and</p> <p>18 defenses, reached an accommodation.</p> <p>19 And presumably each party found</p> <p>20 something beneficial to them. What I took from</p> <p>21 it, as I indicated in here in Paragraph 139, is</p> <p>22 that I thought they were reflective of similar</p> <p>23 claims where the litigants had obviously</p> <p>24 recognized some risk of outcome because there was</p> <p>25 a settlement that was somewhere between a complete</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 defense and victory and a complete plaintiff's</p> <p>3 victory, and it was above a nuisance.</p> <p>4 Q. But that's not really true with</p> <p>5 Assured Guaranty and Flagstar; is it?</p> <p>6 A. I don't understand the question.</p> <p>7 It sounds like an argument to me.</p> <p>8 Q. Well, in Assured Guaranty v.</p> <p>9 Flagstar, there wasn't a settlement.</p> <p>10 Is that correct?</p> <p>11 A. That one was a trial. You're</p> <p>12 right.</p> <p>13 Q. And are you aware, other than that</p> <p>14 case, of any other case that went to verdict,</p> <p>15 where a monoline insurer did not prevail?</p> <p>16 MR. KERR: Objection.</p> <p>17 A. I don't think I know of any other</p> <p>18 case that went to verdict. So, out of that one</p> <p>19 case the monoline did prevail.</p> <p>20 MR. CARNEY: I'd like to mark as</p> <p>21 Exhibit 4 -- it's the FGIC settlement at</p> <p>22 issue. It's Exhibit 2 to the 9019 motion.</p> <p>23 (Lipps Exhibit 4 marked for</p> <p>24 identification.)</p> <p>25 Q. Do you recognize this document?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I have seen it before.</p> <p>3 Q. Can you tell me the context --</p> <p>4 strike that.</p> <p>5 Can you tell me the first time you</p> <p>6 saw it?</p> <p>7 MR. KERR: Objection. Asked and</p> <p>8 answered.</p> <p>9 A. I believe, as I testified earlier,</p> <p>10 I saw it during a meeting on May 31st of this</p> <p>11 year.</p> <p>12 Q. And did you also testify that you</p> <p>13 considered this in formulating your Declaration</p> <p>14 that's marked as Exhibit 1?</p> <p>15 MR. KERR: Objection.</p> <p>16 A. I did review this in connection</p> <p>17 with offering the opinions that I offered in my</p> <p>18 Declaration.</p> <p>19 Q. Did you consider anything else,</p> <p>20 other than this Settlement Agreement, other than</p> <p>21 what we've already talked about, in formulating</p> <p>22 your Declaration marked as Exhibit 1?</p> <p>23 MR. KERR: Other than what we've</p> <p>24 already talked about. What he's testified to?</p> <p>25 MR. CARNEY: What he's testified</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 to.</p> <p>3 A. I can't, as I sit here at this</p> <p>4 moment, think of anything that in the two</p> <p>5 examinations that I considered that we didn't</p> <p>6 discuss or at least that I didn't advise you of.</p> <p>7 Obviously, there's things that are in the</p> <p>8 Declaration that we haven't discussed. For</p> <p>9 example, the governing documents.</p> <p>10 In various points I do cite</p> <p>11 provisions from the governing agreements for some</p> <p>12 of the securitizations, the FGIC wrap. So, I</p> <p>13 mean, that's something I don't think we've</p> <p>14 specifically discussed, but that was something I</p> <p>15 did look at and take into account.</p> <p>16 Q. And you reviewed the governing</p> <p>17 agreements in connection with your Declaration?</p> <p>18 A. At some point I probably reviewed</p> <p>19 all -- certainly the 20 that were in the initial</p> <p>20 suits. And I've looked at other securitizations</p> <p>21 that are involved in this settlement.</p> <p>22 Q. So, what is your understanding of</p> <p>23 the claims between the ResCap Debtors and FGIC</p> <p>24 that are being settled or proposed to be settled</p> <p>25 under this Settlement Agreement marked as, I</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 believe, Exhibit 4?</p> <p>3 A. Just between FGIC and the Debtors?</p> <p>4 Q. For right now, yes.</p> <p>5 A. Well, I think all potential claims</p> <p>6 that they have, including those related to</p> <p>7 origination and servicing, are being resolved.</p> <p>8 Q. Have you reviewed this Settlement</p> <p>9 Agreement in detail?</p> <p>10 MR. KERR: Objection.</p> <p>11 A. I've reviewed it, and I've reviewed</p> <p>12 it in sufficient detail to offer the opinions that</p> <p>13 I've offered.</p> <p>14 Q. So, if you turn to Article 3 on</p> <p>15 page 6 of the Settlement Agreement, what is your</p> <p>16 understanding of what FGIC's allowed claims</p> <p>17 against the ResCap Debtors will be if a settlement</p> <p>18 is approved?</p> <p>19 A. Well, I think my understanding is</p> <p>20 what it says in Article 3. Do you want me to read</p> <p>21 it? My understanding is what's set forth in</p> <p>22 Article 3.</p> <p>23 Q. Well, do you have an</p> <p>24 interpretation -- do you have an understanding,</p> <p>25 other than the actual text of what's set forth in</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Article 3, kind of what's going on, what's going</p> <p>3 on or proposed to happen?</p> <p>4 MR. KERR: Objection.</p> <p>5 A. I've read the agreement. I think I</p> <p>6 can read English sentences and understand it. I</p> <p>7 wasn't involved in negotiating it. I wasn't</p> <p>8 involved in understanding what the issues were, if</p> <p>9 any, that gave rise to the specific language. So,</p> <p>10 I don't know if I consider myself an interpretive</p> <p>11 body on Section 3.01.</p> <p>12 Q. But do you have a general idea?</p> <p>13 A. As I said, I read the sentences,</p> <p>14 and I believe I understand, based on those</p> <p>15 sentences, what the intention is.</p> <p>16 Q. And what is your understanding of</p> <p>17 the intention, based on your reading of those</p> <p>18 sentences?</p> <p>19 MR. KERR: Objection.</p> <p>20 A. It's to articulate the amount of an</p> <p>21 allowed general unsecured claim for various</p> <p>22 Debtors under at least two potential scenarios.</p> <p>23 Q. And do you have an understanding of</p> <p>24 what those two potential scenarios are?</p> <p>25 A. I think one is if there is not a</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 plan of reorganization that's approved, and one</p> <p>3 is -- did I say if not?</p> <p>4 Q. You said if not.</p> <p>5 A. And then one if it is.</p> <p>6 Q. So, what's your understanding if</p> <p>7 the plan of reorganization isn't approved?</p> <p>8 MR. KERR: Objection.</p> <p>9 Understanding as to what?</p> <p>10 Q. Of what FGIC's allowed claims will</p> <p>11 be against the Debtors under the settlement.</p> <p>12 A. If it's approved or if it's not</p> <p>13 approved?</p> <p>14 Q. If it's not approved.</p> <p>15 A. Ask me the question again then.</p> <p>16 Q. I'll repeat it.</p> <p>17 What's your understanding of FGIC's</p> <p>18 allowed unsecured claim against the Debtors if a</p> <p>19 plan of reorganization is not confirmed?</p> <p>20 MR. KERR: Objection. Mr. Lipps is</p> <p>21 not here to give opinions about the meaning of</p> <p>22 3.01. If you can respond to his question</p> <p>23 reading the language, feel free, but that's</p> <p>24 not what he's giving his opinion about, and I</p> <p>25 think you know that. So, I object.</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 MR. CARNEY: I just want his</p> <p>3 understanding.</p> <p>4 A. Ask me the question again.</p> <p>5 Q. What's your understanding of what</p> <p>6 happens to FGIC's allowed claim against the ResCap</p> <p>7 Debtors under the settlement if a plan of</p> <p>8 reorganization is not confirmed?</p> <p>9 MR. KERR: Objection.</p> <p>10 A. My understanding is that there is a</p> <p>11 general unsecured claim in the amount of</p> <p>12 \$596,500,000. There is no determination, at this</p> <p>13 point, as to how that will be allocated. And</p> <p>14 there are possibilities for FGIC to assert</p> <p>15 additional claims up to a certain cap amount, and</p> <p>16 reservation by the Debtors to challenge this.</p> <p>17 Q. Do you have any idea of how much</p> <p>18 cash FGIC will get on account of its \$596.5</p> <p>19 million claim?</p> <p>20 A. I have no understanding of any</p> <p>21 waterfall related to general unsecured claims.</p> <p>22 Q. So, you don't know?</p> <p>23 A. I don't know how the waterfall</p> <p>24 would flow on those general unsecured allowed</p> <p>25 claims.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 MR. CARNEY: I'm going to mark as</p> <p>3 Lipps Exhibit 5 -- this is the Order to Show</p> <p>4 Cause and related documents filed in the</p> <p>5 Rehabilitation Court.</p> <p>6 (Lipps Exhibit 5 marked for</p> <p>7 identification.)</p> <p>8 Q. Mr. Lipps, have you seen this</p> <p>9 document before?</p> <p>10 A. I have not.</p> <p>11 Q. You have not?</p> <p>12 A. I have not.</p> <p>13 Q. Okay. Can you turn to page -- can</p> <p>14 you turn to three pages into it? It begins with a</p> <p>15 caption, and then it says "affirmation."</p> <p>16 Have you seen that document before?</p> <p>17 A. You mean an affirmation by Gary</p> <p>18 Holtzer?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. Did you review all of the exhibits</p> <p>22 to the 9019 motion to approve this Settlement</p> <p>23 Agreement marked as Exhibit 4?</p> <p>24 A. As I recall, I reviewed the motion</p> <p>25 papers itself. I principally focused on what</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 references there were to my Declaration. I looked</p> <p>3 at the -- obviously the FGIC Settlement Agreement,</p> <p>4 which I believe is attached, and I briefly looked</p> <p>5 at Mr. Kruger's Declaration.</p> <p>6 Q. So, you did not look at any of the</p> <p>7 other declarations?</p> <p>8 A. I may have looked at -- is it</p> <p>9 D'Vari?</p> <p>10 Q. Okay. Anyone else?</p> <p>11 A. I don't think I looked at any</p> <p>12 others.</p> <p>13 MR. CARNEY: I'd like to mark this</p> <p>14 as Lipps Exhibit 6.</p> <p>15 (Lipps Exhibit 6 marked for</p> <p>16 identification.)</p> <p>17 Q. Do you recognize this document at</p> <p>18 all as Exhibit 10 to the 9019 motion?</p> <p>19 A. I don't recognize it as Exhibit 10</p> <p>20 to the 9019 motion. If you're representing it is,</p> <p>21 I don't have any basis to dispute it. I did not</p> <p>22 review this.</p> <p>23 Q. Do you understand that the</p> <p>24 indenture trustees have claims against ResCap?</p> <p>25 MR. KERR: Objection. The</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 indenture trustee with respect to the FGIC</p> <p>3 settlements or just broadly?</p> <p>4 Q. With respect to Exhibit 2, the</p> <p>5 Settlement Agreement that I believe is marked as</p> <p>6 Lipps Exhibit 4, do you understand that this</p> <p>7 Settlement Agreement that we're discussing today,</p> <p>8 which people have been calling the FGIC Settlement</p> <p>9 Agreement, do you understand that this also</p> <p>10 settles certain claims of the indenture trustees</p> <p>11 against the Debtors, the ResCap Debtors.</p> <p>12 MR. HAO: Objection to form.</p> <p>13 A. I do understand that there is a</p> <p>14 release of origination-based claims asserted by</p> <p>15 the Trustees on behalf of the Trust, against</p> <p>16 Debtors.</p> <p>17 Q. And what is your understanding of</p> <p>18 the nature of such claims?</p> <p>19 A. Well, my understanding is based on</p> <p>20 my experience in defending these rep and warranty</p> <p>21 claims. I understand under purchase agreements</p> <p>22 certain remedies that the Trustees have available</p> <p>23 to them, and I've seen the proofs of claim filed</p> <p>24 by the trustees.</p> <p>25 Q. That wasn't quite my question.</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 What's your understanding of the nature of these</p> <p>3 claims? What are they based on? What are the</p> <p>4 claims about?</p> <p>5 A. Well, I think the Trustees have</p> <p>6 asserted rep and warranty claims, and they have</p> <p>7 asserted tort claims.</p> <p>8 Q. What kind of tort claims?</p> <p>9 A. I seem to recall there may be</p> <p>10 negligent misrepresentation in there. Fraud -- I</p> <p>11 can't remember for certain whether or not aiding</p> <p>12 and abetting was in there, but I think it may be</p> <p>13 in piercing the corporate veil.</p> <p>14 Q. So, their rep and warranty</p> <p>15 claims are among those claims, in your</p> <p>16 understanding. Is that correct?</p> <p>17 A. I think they have asserted some</p> <p>18 claims that would be available to them for breach</p> <p>19 of rep and warranty.</p> <p>20 Q. And are those claims, to your</p> <p>21 knowledge, being settled in the Settlement</p> <p>22 Agreement, the FGIC Settlement Agreement?</p> <p>23 MR. KERR: Objection.</p> <p>24 A. My understanding is that the</p> <p>25 origination claims of the trustee -- and that</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 would be the loan level rep and warranties -- are</p> <p>3 being released as part of this settlement, if it's</p> <p>4 approved.</p> <p>5 Q. And do you have an understanding of</p> <p>6 how those claims are being settled?</p> <p>7 A. I don't know what you mean by that.</p> <p>8 Q. Do you understand what kind of</p> <p>9 consideration is going to the Trustees to settle</p> <p>10 those claims?</p> <p>11 MR. KERR: Objection.</p> <p>12 A. I mean, I think the Settlement</p> <p>13 Agreement sets forth what the consideration is for</p> <p>14 the various parties that are signatories to it.</p> <p>15 Q. And do you have an understanding --</p> <p>16 other than just referring to the actual text of</p> <p>17 the Settlement Agreement, what's your</p> <p>18 understanding of how that's done; if you know?</p> <p>19 A. Well, my only understanding -- of</p> <p>20 how what's done?</p> <p>21 Q. Of how those claims are being</p> <p>22 settled under the Settlement Agreement.</p> <p>23 A. Well, I think they're being</p> <p>24 released. I think there's release language that</p> <p>25 describes what the trustees are releasing as part</p>



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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 of the settlement.</p> <p>3 Q. And do you have an understanding of</p> <p>4 what they're receiving on account of those</p> <p>5 releases?</p> <p>6 A. I think from a review of the</p> <p>7 Settlement Agreement I have an understanding of</p> <p>8 it.</p> <p>9 Q. And what is that understanding?</p> <p>10 A. I believe -- if I can reference it,</p> <p>11 I think there is a payment by FGIC of about 256</p> <p>12 million -- 253.3 million that I think goes to the</p> <p>13 Trust, based on an allocation where there's a</p> <p>14 methodology in the back of the settlement as to</p> <p>15 how that will be allocated.</p> <p>16 I understand that there will be a</p> <p>17 savings going forward for the Trust on premiums</p> <p>18 that they would otherwise pay for the Financial</p> <p>19 Guaranty policies.</p> <p>20 Q. And is that understanding based on</p> <p>21 anything other than your own independent reading</p> <p>22 of the Settlement Agreement?</p> <p>23 A. No. That would be the source of</p> <p>24 it.</p> <p>25 Q. So, no one explained to you how the</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Settlement Agreement works?</p> <p>3 MR. KERR: Objection. You don't --</p> <p>4 you can answer that question. I'm not going</p> <p>5 to have you reveal any privileged</p> <p>6 communications, if any, but you can answer the</p> <p>7 question.</p> <p>8 A. I reviewed the Settlement Agreement</p> <p>9 and took from it what I needed to take from it in</p> <p>10 order to offer the opinions.</p> <p>11 As I indicated, I had a meeting</p> <p>12 with Morrison &amp; Foerster on May 31st, and I don't</p> <p>13 think I'm in a position where I should be</p> <p>14 disclosing what we may have discussed in that</p> <p>15 meeting.</p> <p>16 Q. Is that on the grounds of</p> <p>17 privilege?</p> <p>18 MR. KERR: Mr. Lipps, as an expert,</p> <p>19 can testify to communications he had with us</p> <p>20 in the context as an expert. I have no</p> <p>21 problem with that.</p> <p>22 Mr. Lipps, in his capacity as an</p> <p>23 expert on this 9019 motion, is free to testify</p> <p>24 about any communication he had with Morrison &amp;</p> <p>25 Foerster about his expert opinion, and as a</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 basis for that expert opinion. He has been</p> <p>3 special counsel for the Debtors, who have</p> <p>4 since been appointed by the Bankruptcy Court,</p> <p>5 and I just don't want him to be revealing</p> <p>6 communications he may have had with the</p> <p>7 Debtors or Morrison &amp; Foerster outside the</p> <p>8 context of his role as an expert witness.</p> <p>9 A. And the May 31st meeting was not a</p> <p>10 specific agenda that says FGIC settlement and the</p> <p>11 project. There were other things that were</p> <p>12 discussed related to other issues. I'm working</p> <p>13 with the same lawyers on a number of other related</p> <p>14 matters -- related to the bankruptcy matters.</p> <p>15 As far as the discussion related to</p> <p>16 the 9019, they gave me a copy of the Settlement</p> <p>17 Agreement, and I'm sure that I got, in a very</p> <p>18 brief overview, some of the essential terms of the</p> <p>19 agreement, but I don't remember specifically what</p> <p>20 was told to me.</p> <p>21 In forming my opinions and offering</p> <p>22 them here, I based it on my review of the</p> <p>23 Settlement Agreement.</p> <p>24 Q. And I believe you said earlier that</p> <p>25 you took what you needed from the Settlement</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Agreement to form the opinion in your Declaration.</p> <p>3 Can you tell me what portions of</p> <p>4 the Settlement Agreement you used in forming your</p> <p>5 opinion that you're submitting?</p> <p>6 A. Well, I looked at the entirety of</p> <p>7 it, but the key focus for purposes of what I was</p> <p>8 offering an opinion on was what claims were being</p> <p>9 released so that I could understand what the risks</p> <p>10 and uncertainties were associated with those</p> <p>11 claims, and what the cost and/or burden would be</p> <p>12 in prosecuting or defending those claims, which,</p> <p>13 as you know, was the focus of my opinion.</p> <p>14 Q. And can you point me to those</p> <p>15 sections of the Settlement Agreement that you did</p> <p>16 specifically rely upon to form your Declaration?</p> <p>17 MR. KERR: Objection.</p> <p>18 A. Well, again, I read the whole</p> <p>19 thing.</p> <p>20 MR. KERR: He just testified he</p> <p>21 relied on the whole thing.</p> <p>22 A. But, you know, wherever in here</p> <p>23 there was some discussion of releases of claims</p> <p>24 and what the scope of the release was, and it's</p> <p>25 not confined to just one clean little paragraph,</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 as I recall, that would be what I would be looking</p> <p>3 at for purposes of assessing what the risks and</p> <p>4 uncertainties were associated with those claims.</p> <p>5 Q. But sitting here today you can't</p> <p>6 flip through this and actually tell me</p> <p>7 specifically what those sections were?</p> <p>8 A. Article 2 talks about the releases.</p> <p>9 And the definition section is important in order</p> <p>10 to read the release section. I'm sure I would</p> <p>11 have looked at Article 3 because it talks about</p> <p>12 allowed claims in the context of the bankruptcy,</p> <p>13 but I would want to make sure that I had a full</p> <p>14 understanding of what the claims were that were</p> <p>15 either subject to or not subject to the release.</p> <p>16 And I probably would have looked at the conditions</p> <p>17 preceding the section to see how, if at all, that</p> <p>18 would impact the claims. I may have looked at the</p> <p>19 representation section just to see what was being</p> <p>20 represented by the releasing parties.</p> <p>21 On a quick glance that's what I</p> <p>22 probably would have focused on.</p> <p>23 Q. All right. Anything else?</p> <p>24 A. Well, like I said, I would have</p> <p>25 read the whole thing, but those are the principal</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 sections, I think, that gave me the -- I mean, I</p> <p>3 would have looked at the listing of the trust, and</p> <p>4 the suits to see -- because that's part of the</p> <p>5 scope of the claims.</p> <p>6 MR. CARNEY: To the extent we have</p> <p>7 any left, I will reserve my time, but that's</p> <p>8 all I have for now.</p> <p>9 (Recess taken.)</p> <p>10 EXAMINATION BY</p> <p>11 MR. SHORE:</p> <p>12 Q. Good afternoon.</p> <p>13 A. Good afternoon.</p> <p>14 Q. I'm Chris Shore from White &amp; Case</p> <p>15 on behalf of the Ad Hoc Group of Junior Secured</p> <p>16 Notes.</p> <p>17 You testified to a May 31 meeting.</p> <p>18 Prior to that date had anybody talked to you about</p> <p>19 preparing a Declaration in support of a FGIC</p> <p>20 settlement?</p> <p>21 A. I may have had a brief call or an</p> <p>22 e-mail just saying we'd like to meet with you.</p> <p>23 There is a FGIC settlement, and we'd like to have</p> <p>24 a discussion with you to see if you could offer</p> <p>25 any opinions to assist in the 9019, but it would</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 have been no more than a brief alerting me on what</p> <p>3 one of the items of the meeting was, and</p> <p>4 scheduling it.</p> <p>5 Q. And where did that meeting take</p> <p>6 place?</p> <p>7 A. At the offices of Morrison &amp;</p> <p>8 Foerster.</p> <p>9 Q. And who was there?</p> <p>10 A. I remember Alex. Lawrence was</p> <p>11 there. Rob Baehr was there. Jim Newton. There</p> <p>12 was one other associate. I was there with my</p> <p>13 partner, Jen Battle.</p> <p>14 Q. I'm sorry. Her name?</p> <p>15 A. Jen Battle, Jennifer Battle.</p> <p>16 Q. And how long did the meeting take</p> <p>17 place?</p> <p>18 A. That portion of the discussion that</p> <p>19 related to FGIC was fairly brief. I would say 15,</p> <p>20 20 minutes.</p> <p>21 Q. What did anybody tell you about</p> <p>22 what the assignment was?</p> <p>23 MR. KERR: And just so we're clear,</p> <p>24 Chris, as he's testified, there were other</p> <p>25 aspects. So, this is just the aspect of the</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 FGIC settlement. You're free to testify about</p> <p>3 that. That's fine.</p> <p>4 Q. What did anybody tell you about</p> <p>5 what the assignment was?</p> <p>6 A. I had already offered a Declaration</p> <p>7 that related to the RMBS Trust Settlement. So, I</p> <p>8 had an expectation going in that they would want</p> <p>9 me to look at uncertainties, risks associated with</p> <p>10 those claims that were being resolved in the</p> <p>11 settlement, and I had an expectation that they</p> <p>12 would ask me to offer some opinions related to the</p> <p>13 costs associated with it.</p> <p>14 So, going in I had the expectation</p> <p>15 that they wanted me to look at the settlement,</p> <p>16 look at the claims that were being released, and</p> <p>17 advise them as to whether I could offer some</p> <p>18 opinions related to that.</p> <p>19 What I didn't know is whether or</p> <p>20 not they wanted me to offer an opinion on range of</p> <p>21 reasonableness or things like that, and in the</p> <p>22 best interest. And ultimately I did not include</p> <p>23 that in the report. I certainly have some views</p> <p>24 on it.</p> <p>25 Q. Did they ask you to provide opinion</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 testimony on range of reasonableness?</p> <p>3 A. No.</p> <p>4 Q. And what about best interests?</p> <p>5 A. No. They asked me to offer the</p> <p>6 opinions I could offer on the matters that I</p> <p>7 identified.</p> <p>8 Q. And did they tell you anything else</p> <p>9 at that meeting about what the scope of your</p> <p>10 assignment was?</p> <p>11 A. No, I don't think they ever really</p> <p>12 told me what the scope of the assignment was. I</p> <p>13 think we identified the issues that they felt</p> <p>14 opinion testimony would be helpful on in the</p> <p>15 context of the 9019, and I defined the scope of</p> <p>16 what I was going to do from that point going</p> <p>17 forward.</p> <p>18 Q. And did they tell you what the</p> <p>19 timing was for the assignment?</p> <p>20 A. I seem to recall under the</p> <p>21 Settlement Agreement there was a need for a</p> <p>22 filing, June 7th.</p> <p>23 Q. And did you express any concerns at</p> <p>24 that meeting with respect to whether you would</p> <p>25 have enough time to form your independent opinions</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 with respect to the matters on which the Debtors</p> <p>3 wanted you to testify?</p> <p>4 A. No. I had enough time.</p> <p>5 Q. Did you keep any record of that</p> <p>6 meeting?</p> <p>7 A. No, other than I think I looked at</p> <p>8 my calendar book to see when it was.</p> <p>9 Q. Are you aware of whether anybody</p> <p>10 else kept a record of that meeting?</p> <p>11 A. No. I don't know. By "records"</p> <p>12 you mean notes?</p> <p>13 Q. Sure.</p> <p>14 A. No, I didn't take any notes.</p> <p>15 Q. Do you know whether Ms. Battle kept</p> <p>16 any notes?</p> <p>17 A. I don't believe she took any notes.</p> <p>18 Q. All right. What did you do next</p> <p>19 after the meeting with respect to the assignment?</p> <p>20 A. I might have gotten lunch, but with</p> <p>21 respect to the assignment I believe what I did was</p> <p>22 I read the Settlement Agreement.</p> <p>23 Q. Okay. Who else worked with you on</p> <p>24 the preparation of your Declaration?</p> <p>25 A. I was assisted by Jennifer Battle</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 from my office and David Beck from my office.</p> <p>3 Q. Anybody from MoFo assist you?</p> <p>4 A. No.</p> <p>5 Q. And when after the May 31 meeting</p> <p>6 did you form the opinions that you expressed in</p> <p>7 what's been marked as Lipps No. 1?</p> <p>8 A. Probably over the ensuing three or</p> <p>9 four days. I think I had -- I was clearly in the</p> <p>10 drafting phase by Monday and Tuesday.</p> <p>11 Q. And what was Ms. Battle's role in</p> <p>12 the preparation of Lipps 1?</p> <p>13 A. She assisted me in the writing of</p> <p>14 it.</p> <p>15 Q. Did she provide you any facts or</p> <p>16 other data which you used in forming your</p> <p>17 opinions?</p> <p>18 A. No.</p> <p>19 Q. And what about Mr. Beck? Did he</p> <p>20 provide you -- what was his role?</p> <p>21 A. The same. He assisted me with the</p> <p>22 drafting of it and pulling some of the sites and</p> <p>23 references to cases.</p> <p>24 Q. Did he provide you with any facts</p> <p>25 or other data upon which you formed your opinions?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. So, what did you do in the three to</p> <p>4 four days following the 5/31 meeting to gather</p> <p>5 facts and data that you felt were necessary to</p> <p>6 form your opinions?</p> <p>7 A. I reviewed the Settlement</p> <p>8 Agreement. I pulled out, once again, the FGIC</p> <p>9 complaints that have been filed pre-petition. I</p> <p>10 reviewed proofs of claim that were filed by FGIC</p> <p>11 and by the Trustees.</p> <p>12 Q. Who gave those to you?</p> <p>13 A. I had had them. I was special</p> <p>14 counsel. We'd been reviewing proofs of claim both</p> <p>15 by monolines and trustees for months.</p> <p>16 Q. When you say "we," who is we?</p> <p>17 A. My firm and myself in particular,</p> <p>18 in conjunction with Morrison &amp; Foerster.</p> <p>19 Q. Okay.</p> <p>20 A. And I did pull out my prior</p> <p>21 declarations that I'd filed in connection with the</p> <p>22 RMBS Trust Settlement to see what portions of</p> <p>23 those would be applicable to my analysis in this</p> <p>24 case. And I probably looked at some exemplar</p> <p>25 governing documents.</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 I mean, I had pretty intimate</p> <p>3 familiarity with the second lien documentation,</p> <p>4 which is a lot of what FGIC was wrapping, both</p> <p>5 from defending RFC and GMAC Mortgage, as well as</p> <p>6 through my work as special counsel for the</p> <p>7 Debtors.</p> <p>8 But I probably pulled out some</p> <p>9 exemplars, as I recall, of subprime, which is an</p> <p>10 alternate, and I think I probably looked at an</p> <p>11 NCA, a negotiated conduit asset securitization</p> <p>12 documentation and then some first liens, just to</p> <p>13 familiarize myself with what the rights were of</p> <p>14 the monoline as described in those documents, and</p> <p>15 get a sense of the reps and warranties that were</p> <p>16 in there. And, obviously, I had a lot between my</p> <p>17 ears that I had from my various defense of these</p> <p>18 cases.</p> <p>19 Q. Well, let me see if you can break</p> <p>20 that down. How much of your report is based upon</p> <p>21 what you had between your ears before you got</p> <p>22 asked to do Lipps No. 1, and how much was based</p> <p>23 upon review you did in the three or four days</p> <p>24 after you got the assignment?</p> <p>25 MR. KERR: Objection.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. That's hard to say because much of</p> <p>3 what I did prior to getting the assignment was</p> <p>4 useful in putting together the Declaration. And</p> <p>5 by that I mean -- very specifically I mean the</p> <p>6 FGIC complaints, the proofs of claims, the Trustee</p> <p>7 stuff that I had -- proofs of claims that I'd</p> <p>8 looked at. We'd done analysis at various points</p> <p>9 in time on defenses to monoline claims and things</p> <p>10 like that.</p> <p>11 So, I had a lot of materials that I</p> <p>12 could quickly pick up. I absorbed what I felt I</p> <p>13 needed in terms of re-reviewing proofs of claims</p> <p>14 and things like that over that day period, but,</p> <p>15 you know, in terms of new stuff, really the only</p> <p>16 thing probably specifically new that I had not</p> <p>17 looked at before that date was the FGIC</p> <p>18 settlement.</p> <p>19 Q. Yes. So, let me maybe ask it this</p> <p>20 way: Do you believe that you would have been in a</p> <p>21 position to reach the conclusions you expressed in</p> <p>22 Lipps No. 1 in three or four days had you not been</p> <p>23 special counsel to the Debtors before that date?</p> <p>24 MR. KERR: Objection.</p> <p>25 A. Probably based on my pre-petition</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 litigation experience.</p> <p>3 Q. For the Debtors or in relation to</p> <p>4 other RMBS?</p> <p>5 A. Well, pre-petition they weren't</p> <p>6 Debtors, but it was the same entities, and then</p> <p>7 representing non-Debtor affiliated entities and</p> <p>8 former officers and directors.</p> <p>9 If you wipe out the time period</p> <p>10 from May of 2012 to May 31, 2013, I may have had</p> <p>11 to do a little more research on what the state of</p> <p>12 the law was, because I would have been going dark</p> <p>13 if I wouldn't have been special counsel, but by</p> <p>14 being special counsel and being relied upon to</p> <p>15 formulate potential grounds for objections and</p> <p>16 things like that, I kept abreast of the state of</p> <p>17 the law on some of those issues.</p> <p>18 Q. Yeah, let me rephrase my question</p> <p>19 then.</p> <p>20 Had you not been counsel to the</p> <p>21 Debtors or to the entities before they became</p> <p>22 Debtors, would you have been able to provide the</p> <p>23 opinions you expressed in Lipps No. 1 based solely</p> <p>24 upon the work you did after the 5/31 meeting?</p> <p>25 MR. KERR: Objection.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. Well, that's speculative, and it's</p> <p>3 really hard for me to divorce myself from all the</p> <p>4 experience that I had since I was retained in</p> <p>5 2010.</p> <p>6 So, I really don't know, one,</p> <p>7 whether they would have come to me to see if I</p> <p>8 could offer some opinions that would be of value</p> <p>9 but for the fact that I had this experience in</p> <p>10 defending the company specifically on RMBS cases</p> <p>11 and being deeply immersed in that area of the law.</p> <p>12 Q. Well, I'm not asking you to</p> <p>13 speculate. Can you testify, as a matter of fact,</p> <p>14 that had you not been employed by ResCap, LLC or</p> <p>15 any of its affiliates prior to 5/31, that you</p> <p>16 would have been in a position to file Lipps 1 on</p> <p>17 June 7?</p> <p>18 MR. KERR: Objection.</p> <p>19 A. I probably would have taken a</p> <p>20 little more support than I needed at the time.</p> <p>21 But I probably could have dug into the law, and</p> <p>22 based on my experience as a litigator offered some</p> <p>23 views on expenses and things like that, and legal</p> <p>24 uncertainties, but it would have taken a lot more</p> <p>25 research and probably resources in my firm than it</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 otherwise took.</p> <p>3 Q. How much time did your firm spend?</p> <p>4 So, that's you, Ms. Battle, and Mr. Beck spend on</p> <p>5 preparing Lipps No. 1?</p> <p>6 A. I don't know. I haven't looked at</p> <p>7 that.</p> <p>8 Q. You don't have any idea? How much</p> <p>9 time did you spend?</p> <p>10 A. Well, I would have spent part of</p> <p>11 the afternoon and evening of the 31st looking at</p> <p>12 the FGIC Settlement Agreement, and I would have</p> <p>13 worked on it over the weekend. But I had other</p> <p>14 things going on at the time, so it's hard for me</p> <p>15 to segregate it out without going back, looking at</p> <p>16 the records. But I probably had a few hours each</p> <p>17 of Saturday, Sunday, Monday. You know, Monday and</p> <p>18 Tuesday may have been more than a few hours.</p> <p>19 Q. So, under 20 hours between the time</p> <p>20 that you got the assignment and the time you</p> <p>21 formed the opinions that led to -- that are</p> <p>22 expressed in Lipps No. 1?</p> <p>23 A. I can't pin a specific time on it.</p> <p>24 Q. Would it be reflected in your time</p> <p>25 records?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. It would be.</p> <p>3 MR. SHORE: Can we just ask --</p> <p>4 they're going to have to be disclosed anyway.</p> <p>5 Can we get the time records associated just</p> <p>6 with the preparation of the Lipps report for</p> <p>7 Battle, Beck, and Lipps, please.</p> <p>8 MR. KERR: I'll take that under</p> <p>9 advisement.</p> <p>10 MR. SHORE: Okay.</p> <p>11 Q. At any time between the 5/31</p> <p>12 meeting and the filing of Lipps No. 1 did you</p> <p>13 communicate with anybody at the Debtors, that is</p> <p>14 an officer, a director, an employee, or Board</p> <p>15 member?</p> <p>16 A. What's the time period?</p> <p>17 Q. 5/31 and June 7.</p> <p>18 A. On any matter?</p> <p>19 Q. No, I'm sorry. With respect to the</p> <p>20 matters addressed in Lipps No. 1.</p> <p>21 A. And who was the universe again?</p> <p>22 Q. Anybody that's an officer,</p> <p>23 director, employee of any of the Debtors.</p> <p>24 A. I don't believe so, with one</p> <p>25 exception. I may have, or somebody else working</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 with me, either Ms. Battle or Mr. Beck, may have</p> <p>3 had to reach out to somebody at the company to get</p> <p>4 some of the governing documents. I don't have all</p> <p>5 of the hundreds of governing documents necessarily</p> <p>6 at my fingertips. So, we may have had to reach</p> <p>7 out for a couple of those exemplars that I</p> <p>8 mentioned.</p> <p>9 Q. Other than are you aware of any</p> <p>10 communications?</p> <p>11 A. No.</p> <p>12 Q. Have you ever spoken to Mr. Kruger</p> <p>13 directly?</p> <p>14 A. At any point in time?</p> <p>15 Q. Yes.</p> <p>16 A. Sure.</p> <p>17 Q. Okay. Have you ever spoken to</p> <p>18 Mr. Kruger about the subject matter of Lipps</p> <p>19 No. 1?</p> <p>20 A. That one is a little trickier</p> <p>21 because I have not discussed with him the actual</p> <p>22 declaration, the product as it was being developed</p> <p>23 and finished. I'm sure that I've had</p> <p>24 conversations and been in meetings where</p> <p>25 Mr. Kruger was there where we discussed monoline</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 claims, potential defenses to monoline claims;</p> <p>3 trustee claims, potential defenses to trustee</p> <p>4 claims.</p> <p>5 Q. Did you ever provide any legal</p> <p>6 advice to Mr. Kruger with respect to the FGIC</p> <p>7 settlement?</p> <p>8 A. No.</p> <p>9 Q. Did you provide any legal advice to</p> <p>10 Mr. Kruger with respect to the claims asserted by</p> <p>11 FGIC or the trust that are revolved in connection</p> <p>12 with the FGIC settlement?</p> <p>13 MR. KERR: Objection, and you can</p> <p>14 answer that question yes or no.</p> <p>15 A. I would say yes.</p> <p>16 Q. And when did you do that?</p> <p>17 A. In the course of time since he has</p> <p>18 been engaged as the CRO, I have been in meetings</p> <p>19 and conversations with him about claims by</p> <p>20 securities holders as well as monolines as well as</p> <p>21 trustees in which I'm certain he's asked my view</p> <p>22 on certain issues and I've offered my view.</p> <p>23 Q. And are you aware of whether any of</p> <p>24 your advice was used in connection with</p> <p>25 determining whether or not to enter into the FGIC</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Settlement Agreement?</p> <p>3 A. I'm not aware of that.</p> <p>4 Q. Have you or anyone at your firm</p> <p>5 represented trusts in connection with RMBS</p> <p>6 litigation?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Any monoline insurers?</p> <p>9 A. No.</p> <p>10 Q. Any security holders of any RMBS</p> <p>11 trusts?</p> <p>12 A. No.</p> <p>13 Q. Where are you licensed to practice</p> <p>14 law?</p> <p>15 A. Licensed in the state of Ohio in</p> <p>16 all courts and in a number of federal courts</p> <p>17 around the country.</p> <p>18 Q. Do you understand that Ohio law</p> <p>19 governs any of the claims that have been asserted</p> <p>20 by FGIC or the trusts that are being resolved with</p> <p>21 the FGIC Settlement Agreement?</p> <p>22 A. There could be some Ohio law</p> <p>23 issues, as I identified in my declaration, with</p> <p>24 respect to loans and whether or not foreclosed</p> <p>25 loans are loans that could be subject to</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 repurchase. That was one specific thing I looked</p> <p>3 at that could be implicated. But it's principally</p> <p>4 New York law in terms of the governing documents</p> <p>5 and the claims and Minnesota law, I think, has</p> <p>6 been involved.</p> <p>7 Q. And what about any kind of fraud</p> <p>8 claims or others that are addressed in footnote 3</p> <p>9 to Lipps No. 1?</p> <p>10 A. Well, it could be. There could be</p> <p>11 other law that's applicable under the conflict of</p> <p>12 law principles.</p> <p>13 Q. But you haven't done any analysis</p> <p>14 as to which law would apply to the claims that</p> <p>15 you're testifying to in connection with Lipps No.</p> <p>16 1?</p> <p>17 MR. KERR: Objection.</p> <p>18 A. No, I think -- well, certainly with</p> <p>19 respect to the FGIC claims, I think it is New York</p> <p>20 law.</p> <p>21 Q. Okay. And are you aware of whether</p> <p>22 there are any New York licensed attorneys who</p> <p>23 would be qualified to provide opinions with</p> <p>24 respect to claims under New York law that are</p> <p>25 discussed in Lipps No. 1?</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. That would be speculation on my</p> <p>3 part, but I assume there probably are other</p> <p>4 licensed attorneys that could do the analysis that</p> <p>5 I did.</p> <p>6 Q. I think you testified before you</p> <p>7 were not involved in any way in the mediation</p> <p>8 process, but you would suspect you or someone at</p> <p>9 your firm was consulted.</p> <p>10 What did you mean by that?</p> <p>11 MR. KERR: Objection.</p> <p>12 A. I understand at the end of the</p> <p>13 process that there was resolution that was reached</p> <p>14 with FGIC, MBIA, certain holders of securities.</p> <p>15 Before that process, I was involved in consulting</p> <p>16 with Morrison and Foerster on defenses and</p> <p>17 potential objections on those claims. So that's</p> <p>18 why I say I suspect. I'm sure they probably took</p> <p>19 some of my information that I provided and walked</p> <p>20 into the room, for example.</p> <p>21 Q. Do you have any personal knowledge</p> <p>22 that they did?</p> <p>23 A. No, I don't.</p> <p>24 Q. Have you ever been involved in any</p> <p>25 bankruptcy case outside of ResCap?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I have.</p> <p>3 Q. And what cases were those?</p> <p>4 A. When I was at Jones Day, Jones Day</p> <p>5 was in the Federated bankruptcy down in</p> <p>6 Cincinnati, and I was one of the litigators that</p> <p>7 was handling adversary proceedings to the extent</p> <p>8 they needed litigation help. I tried a case</p> <p>9 against Justice on the -- whether takeover</p> <p>10 expenses needed to be capitalized or whether they</p> <p>11 could be expensed as ordinary necessary business</p> <p>12 expenses, and that was important to get the</p> <p>13 expense in order to restructure the company.</p> <p>14 I've also been involved in some</p> <p>15 bankruptcies related, specifically, for example,</p> <p>16 to GMAC. I think when it started it was GMAC.</p> <p>17 But it was related to some odometer rollbacks by</p> <p>18 one of the lessees on some commercial leases, and</p> <p>19 that company filed bankruptcy, and we had to</p> <p>20 proceed on some adversary proceedings associated</p> <p>21 with that. And I know I've been in bankruptcy</p> <p>22 court on adversary proceedings on a few other</p> <p>23 cases.</p> <p>24 Q. Have you ever appeared in a</p> <p>25 bankruptcy court in connection with RMBS claims?</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 MR. KERR: Other than --</p> <p>3 A. Just in the context of my role as</p> <p>4 special counsel here.</p> <p>5 Q. I want to focus now just on the</p> <p>6 claims that are being allowed at GMAC Mortgage and</p> <p>7 at RFC. I asked you before whether you were asked</p> <p>8 to opine on the range of reasonableness.</p> <p>9 Did anybody at MoFo or at the</p> <p>10 Debtors ask you informally whether you had a view</p> <p>11 as to whether the claims amounts set forth in the</p> <p>12 FGIC Settlement Agreement were in the zone of</p> <p>13 reasonableness as you understood it?</p> <p>14 MR. KERR: Objection.</p> <p>15 A. Not that I recall.</p> <p>16 Q. And did you volunteer in connection</p> <p>17 with your assignment, your views with respect to</p> <p>18 whether or not the claims that were allowed fell</p> <p>19 within some zone of reasonableness?</p> <p>20 A. With respect to FGIC, I wouldn't</p> <p>21 know.</p> <p>22 Q. You didn't comment at any time as</p> <p>23 special counsel as to whether you thought the</p> <p>24 claims were too high, too low, just right?</p> <p>25 MR. KERR: If you're asking him in</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the context in his role as an expert --</p> <p>3 MR. SHORE: Let me rephrase the</p> <p>4 question.</p> <p>5 Q. You were special counsel with</p> <p>6 respect to the FGIC claims prior to the</p> <p>7 settlement. Right?</p> <p>8 A. In my role as special counsel for</p> <p>9 the Debtors, I did have an occasion to look at the</p> <p>10 and consult on the FGIC claims as well as the</p> <p>11 trustee claims associated with FGIC wrapped trust.</p> <p>12 Q. Did you form any views as to what</p> <p>13 the appropriate level of those claims were? Yes</p> <p>14 or no.</p> <p>15 MR. KERR: Objection.</p> <p>16 A. No.</p> <p>17 Q. Well, you said before you had some</p> <p>18 views as to -- I think you testified before that</p> <p>19 you had some views with respect to whether the</p> <p>20 allowed claims fall within the range of</p> <p>21 reasonableness.</p> <p>22 A. But your question you just asked me</p> <p>23 was bracketed in a different time period.</p> <p>24 Q. So as you sit here today do you</p> <p>25 have views?</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. The amount of the allowed claim</p> <p>3 does fall within the range of reasonableness and</p> <p>4 is in the best interest of the state to resolve.</p> <p>5 Q. But that's not an opinion you</p> <p>6 expressed in Lipps No. 1?</p> <p>7 A. I was not asked to put that into a</p> <p>8 declaration and provide it to the Court.</p> <p>9 Q. And so we're clear, whether you</p> <p>10 were asked or not, those views are not expressed</p> <p>11 in Lipps No. 1?</p> <p>12 A. I think the opinions that you just</p> <p>13 asked me about that I offered you are not</p> <p>14 contained within my declaration, which I believe</p> <p>15 is marked as Lipps 1.</p> <p>16 Q. And so we're clear, as part of your</p> <p>17 responsibilities in connection with fulfilling</p> <p>18 your assignment for the preparation of Lipps No.</p> <p>19 1, you did not express those views to the company,</p> <p>20 that is the Debtors?</p> <p>21 A. What views?</p> <p>22 Q. The views that you said that they</p> <p>23 fall within the range of reasonableness.</p> <p>24 A. No, I did not express those views</p> <p>25 to the company.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. Do you know what Section 501B of</p> <p>3 the bankruptcy code is?</p> <p>4 A. I've been advised of what it is.</p> <p>5 Q. And when were you first advised</p> <p>6 with respect to Section 510B is?</p> <p>7 A. Assuming I haven't ever encountered</p> <p>8 it in some of my other experiences, I know and</p> <p>9 became fairly familiar with it when AIG filed its</p> <p>10 subordination motion. I think it wound up being</p> <p>11 taken off docket.</p> <p>12 Q. And what do you understand Section</p> <p>13 501B in the bankruptcy code to address?</p> <p>14 MR. KERR: Objection.</p> <p>15 A. I think it addresses subordination</p> <p>16 in association with sales of securities.</p> <p>17 Q. And do you understand it also to</p> <p>18 apply to purchase of securities and rescission of</p> <p>19 any purchase or sale of securities?</p> <p>20 A. I'd have to look at it to know</p> <p>21 whether that -- what you just said would be</p> <p>22 accurate.</p> <p>23 Q. What, if any, portion of your</p> <p>24 report takes into consideration -- of Lipps No. 1</p> <p>25 takes into consideration the application of</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Section 510B of the bankruptcy code to any of the</p> <p>3 claims asserted against GMAC M or RFC that are</p> <p>4 resolved in the FGIC Settlement Agreement?</p> <p>5 A. I did not analyze subordination</p> <p>6 under 510B for purposes of offering my opinions.</p> <p>7 Q. Did you analyze any affirmative</p> <p>8 defenses that any of the Debtors might have by</p> <p>9 virtue of being Debtors that could be asserted in</p> <p>10 response to claims that are being settled in the</p> <p>11 FGIC Settlement Agreement?</p> <p>12 MR. KERR: Objection.</p> <p>13 A. Either restate that or read it</p> <p>14 back.</p> <p>15 Q. You set forth a number of defenses</p> <p>16 in Lipps No. 1.</p> <p>17 A. Right.</p> <p>18 Q. Did you consider at all whether</p> <p>19 GMAC M or RFC had any other defenses by virtue of</p> <p>20 there being Debtors in pending bankruptcy cases?</p> <p>21 A. I was aware of that by virtue of</p> <p>22 being in special counsel -- in my special counsel</p> <p>23 role, and I certainly would know that adds</p> <p>24 complexity and perhaps even uncertainty -- well, I</p> <p>25 think it probably does add uncertainty as to how</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 issues like subordination would come out and</p> <p>3 potential challenges to allocation of claims and</p> <p>4 different entities. But it wasn't something I</p> <p>5 needed to express or write about in my</p> <p>6 declaration, my view, to offer the opinions I was</p> <p>7 offering. I could look at the foundation claims</p> <p>8 that were being released and that was a sufficient</p> <p>9 review, in my judgment, to allow me to reach the</p> <p>10 conclusion I did regarding legal uncertainties.</p> <p>11 Q. With respect to the opinion you</p> <p>12 expressed on the range of reasonableness, which is</p> <p>13 not included in Lipps No. 1, how much of your</p> <p>14 opinion with respect to it falling -- the amounts</p> <p>15 falling within the range of reasonableness took</p> <p>16 into consideration defenses that the Debtors would</p> <p>17 have by virtue of being Debtors?</p> <p>18 MR. KERR: Objection.</p> <p>19 A. I didn't take that into account in</p> <p>20 reaching what I offered you today as a view on</p> <p>21 range of reasonableness.</p> <p>22 Q. Do you understand what the effect</p> <p>23 of subordination of claims asserted by FGIC or the</p> <p>24 trusts would have on their ability to recover on</p> <p>25 claims?</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I think I testified before I don't</p> <p>3 have an appreciation of the waterfall that would</p> <p>4 be involved and how those numbers, if they were</p> <p>5 subordinated, would shake out versus not</p> <p>6 subordinated.</p> <p>7 Q. Do you have an appreciation that if</p> <p>8 a claim at GMAC M or RFC was subordinated to</p> <p>9 claims of unsecured creditors, that no matter what</p> <p>10 size of claim that existed, it would get a zero</p> <p>11 recovery?</p> <p>12 MR. KERR: Objection.</p> <p>13 A. I have a sense that subordination</p> <p>14 results in much less if not zero recovery than a</p> <p>15 nonsubordinated claim. I, at least, have that</p> <p>16 appreciation.</p> <p>17 Q. Did you ever litigate a proof of</p> <p>18 claim in a bankruptcy case?</p> <p>19 A. Litigate? I've certainly filed</p> <p>20 proofs of claim, and I've been involved in</p> <p>21 discussions that fall off of that, but I don't</p> <p>22 know that I've ever litigated in the sense of a</p> <p>23 full-blown hearing or estimation proceeding or</p> <p>24 something like that related to a proof of claim or</p> <p>25 proofs of claim.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. That was my next question.</p> <p>3 Have you ever participated in a</p> <p>4 claims estimation proceeding?</p> <p>5 A. No.</p> <p>6 Q. So what is your basis for</p> <p>7 testifying as to the costs of litigating a proof</p> <p>8 of claim versus litigating a claim asserted in a</p> <p>9 federal or state court?</p> <p>10 A. The basis is experience in these</p> <p>11 cases with respect to the scope and the range of</p> <p>12 discovery that is typically necessary and/or</p> <p>13 requested in these types of claims, and I have the</p> <p>14 added experience here of FGIC having served, I</p> <p>15 think, some 117 document requests. So I can see</p> <p>16 that the breath and scope of what FGIC had</p> <p>17 intended to do in discovery was commensurate with</p> <p>18 what had been experienced in the MBIA cases and</p> <p>19 what I had observed in other rep and warranty</p> <p>20 cases. Obviously, it's -- from my experience as</p> <p>21 special litigation counsel and in other cases,</p> <p>22 it's more expedited in the context of a</p> <p>23 bankruptcy. That doesn't necessarily mean that</p> <p>24 the same work isn't done. It takes more people</p> <p>25 and more time and the expense is still essentially</p>



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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 there.</p> <p>3 Q. Well, did you witness the</p> <p>4 litigation of any RMBS proof of claim in these</p> <p>5 cases beyond looking at what document requests</p> <p>6 FGIC presented?</p> <p>7 A. I don't know what you mean by</p> <p>8 witness.</p> <p>9 Q. Let's make this clear. You've</p> <p>10 never been involved in an actual litigation of a</p> <p>11 proof of claim in a bankruptcy case. Right?</p> <p>12 A. I believe I testified to that.</p> <p>13 Q. And I thought your testimony was</p> <p>14 that your views with respect to the costs of</p> <p>15 litigating a proof of claim were based upon</p> <p>16 witnessing what FGIC had served as far as document</p> <p>17 requests.</p> <p>18 Is there anything else that you're</p> <p>19 relying upon to substantiate your assumption that</p> <p>20 the litigation of a proof of claim would have the</p> <p>21 same costs and delay associated with litigating a</p> <p>22 claim outside of bankruptcy?</p> <p>23 MR. KERR: Objection.</p> <p>24 A. The proofs of claim themselves.</p> <p>25 Q. So we have the document requests</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 and the proofs of claim.</p> <p>3 Anything else that you're relying</p> <p>4 on to substantiate your assumption?</p> <p>5 A. Other than the experience I've</p> <p>6 talked about in litigating these cases --</p> <p>7 Q. Outside of bankruptcy.</p> <p>8 A. Right, but you still have the same</p> <p>9 discovery. I mean, I will tell you in the context</p> <p>10 of the creditors committee 2004 requests that</p> <p>11 started off, I mean, we were replicating a lot of</p> <p>12 what had already been done in discovery. So I can</p> <p>13 see the same thing in terms of scope and breath of</p> <p>14 what's necessary happening with FGIC requests and</p> <p>15 the proofs of claim. It's the same range of</p> <p>16 claims and the same type of discovery.</p> <p>17 As I said in the declarations, it's</p> <p>18 different because I have a little bit of insight</p> <p>19 into the specific space of this company, and I</p> <p>20 know that the custodians, for example, that would</p> <p>21 be associated with FGIC deals are not the same</p> <p>22 custodians that we dealt with in MBIA. Just to do</p> <p>23 a simple e-mail search is going to require</p> <p>24 restoration, and work associated with that for</p> <p>25 some 60 custodians is immense. Then you've got</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the number of loan files which I personally know</p> <p>3 is more difficult now with the sale of the</p> <p>4 platform; that you have got some of the loans</p> <p>5 going to ACH 1 and others, and not always the</p> <p>6 entire loan file goes there. So there's the</p> <p>7 burden and expense associated with that.</p> <p>8 I have some visibility into some</p> <p>9 specifics that I know will come into play even in</p> <p>10 the context of the bankruptcy and will impose</p> <p>11 costs on the state.</p> <p>12 Q. Did you ever prepare a budget for</p> <p>13 the litigation of a proof of claim?</p> <p>14 A. No.</p> <p>15 Q. Do you ever prepare a timeline for</p> <p>16 the litigation of a proof of claim?</p> <p>17 MR. KERR: Any proof of claim at</p> <p>18 all?</p> <p>19 MR. SHORE: Yes.</p> <p>20 A. I may have in the context of some</p> <p>21 that I've filed in the past, but I can't recall</p> <p>22 specifically.</p> <p>23 Q. And have you ever prepared a</p> <p>24 discovery plan for the litigation of a proof of</p> <p>25 claim?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I have been involved since I've</p> <p>3 been special counsel in consulting with Morrison</p> <p>4 and Foerster regarding discovery plans that would</p> <p>5 be associated with potential challenges to proofs</p> <p>6 of claim.</p> <p>7 Q. Anything related to RMBS claims?</p> <p>8 A. That would be what I was dealing</p> <p>9 with was PLS and -- or private label securities</p> <p>10 claims by security holders and RMBS.</p> <p>11 Q. And what was your role in those</p> <p>12 discussions?</p> <p>13 A. Meetings and discussions with them</p> <p>14 and sharing the experiences and advice that I have</p> <p>15 and providing recommendations on types of</p> <p>16 discovery to pursue against RMBS and/or PLS proof</p> <p>17 of claim claimants and assessing whether we file</p> <p>18 an adversary and seek discovery in that context or</p> <p>19 whether we try and do it informally or through a</p> <p>20 2004.</p> <p>21 Q. Other than as special counsel to</p> <p>22 the Debtors, have you ever been involved in</p> <p>23 preparing a discovery plan for the litigation of a</p> <p>24 proof of claim?</p> <p>25 A. The only other context that I could</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 have been is in the Federated case. It's been</p> <p>3 quite a few years ago. I can't remember all the</p> <p>4 specifics that I would have been involved in.</p> <p>5 There may have been some proofs of claim that were</p> <p>6 substantial enough that we didn't need to talk and</p> <p>7 plan for discovery, but that's sort of faded from</p> <p>8 my memory.</p> <p>9 Q. And so I take it, it didn't form or</p> <p>10 help you form any of the opinions that you have</p> <p>11 expressed in Lipps No. 1?</p> <p>12 A. No.</p> <p>13 Q. What do you understand claims</p> <p>14 estimation proceedings to be?</p> <p>15 A. I'm not a bankruptcy lawyer, so I</p> <p>16 may not get it right, but I understand it's part</p> <p>17 of a plan process. It's an effort to try and</p> <p>18 establish or estimate an amount that would be set</p> <p>19 up to deal with a group of claims or potential</p> <p>20 claims, and I did have -- it's been a while since</p> <p>21 I've looked at it, but I did have early on in the</p> <p>22 bankruptcy an opportunity to look at what was</p> <p>23 occurring in the Lehman case with respect to the</p> <p>24 estimation of -- I think it was an RMBS claims,</p> <p>25 actually.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. And what about -- what, if</p> <p>3 anything -- let me withdraw that question.</p> <p>4 In forming the opinions expressed</p> <p>5 in Lipps No. 1, how did you factor in any</p> <p>6 knowledge you had with respect to estimation</p> <p>7 proceedings, if any?</p> <p>8 A. As specifically relates to FGIC, I</p> <p>9 didn't specifically discuss, as you can read,</p> <p>10 estimation proceedings. I know I became a little</p> <p>11 bit more familiar with them, and particularly the</p> <p>12 Lehman, in the context of the declaration that I</p> <p>13 offered or declarations that I offered in context</p> <p>14 with the 9019 for the RMBS trust settlement, and I</p> <p>15 know I offered opinions with respect to costs</p> <p>16 there. And I didn't find anything associated with</p> <p>17 the estimating proceeding, something that would</p> <p>18 cause me to ratchet back my views on the</p> <p>19 estimating -- or on the costs associated with</p> <p>20 litigating those claims. So I naturally didn't go</p> <p>21 backwards and try and see if this would affect</p> <p>22 that. I saw that the scope of discovery would be</p> <p>23 sufficient, even in a compressed time, and the</p> <p>24 preparation associated with it, that that cost</p> <p>25 could be supported -- or my opinion could be</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 supported in those costs.</p> <p>3 Q. And do you express those views at</p> <p>4 all in Lipps No. 1?</p> <p>5 A. What I've just said?</p> <p>6 Q. Yes. That estimation would have no</p> <p>7 impact on your views with respect to the costs</p> <p>8 associated with litigating the claims that are</p> <p>9 resolved in the FGIC Settlement Agreement?</p> <p>10 MR. KERR: Objection.</p> <p>11 A. Well, I still think in the</p> <p>12 estimation process you have to address these</p> <p>13 issues. It may be in a more compressed time</p> <p>14 period, but you still have got the discovery that</p> <p>15 leads up to it. In my experience, it's fairly</p> <p>16 massive discovery, and it will be in a more</p> <p>17 compressed time, but a lot of discovery is going</p> <p>18 to happen which is, I think, what you see in the</p> <p>19 foundation of my costs being essentially what the</p> <p>20 demands are in connection with the discovery</p> <p>21 associated with this.</p> <p>22 Q. Did anybody ask you to prepare a</p> <p>23 budget for what it would cost to litigate the</p> <p>24 claims that are being resolved in the FGIC</p> <p>25 Settlement Agreement?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. And did you form any views as to</p> <p>4 the costs?</p> <p>5 MR. KERR: Objection.</p> <p>6 A. Well, I offered views on -- I</p> <p>7 offered my opinion with respect to the costs</p> <p>8 associated with prosecuting and/or defending these</p> <p>9 claims. If you're asking me if I quantified a</p> <p>10 dollar amount, no, I never did that.</p> <p>11 Q. And did you quantify a range?</p> <p>12 A. In my declaration I don't think I</p> <p>13 put a range in, as I recall, or a specific dollar</p> <p>14 amount. I may have in some of my earlier</p> <p>15 declarations, particularly when I talked about</p> <p>16 that the judge utilized in the Western and</p> <p>17 Southern decision. I may have put some numbers in</p> <p>18 there associated with restoration of e-mails</p> <p>19 and/or retrieval and review of loan files, and I</p> <p>20 probably had some numbers associated with hosting</p> <p>21 documents in the course of discovery preparation.</p> <p>22 So I think --</p> <p>23 Q. That's not expressed in Lipps No.</p> <p>24 1?</p> <p>25 A. Not specifically.</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. When was the first time you</p> <p>3 reviewed the claims that either FGIC or the FGIC</p> <p>4 wrapped trust asserted against ResCap, LLC?</p> <p>5 A. When was the bar date? Probably</p> <p>6 about the bar date.</p> <p>7 Q. And what do you understand to be</p> <p>8 the nature of the claims that those entities have</p> <p>9 asserted against ResCap, LLC?</p> <p>10 A. I understand them to be in the</p> <p>11 nature of aiding and abetting and piercing the</p> <p>12 corporate veil.</p> <p>13 Q. And do you understand alter ego</p> <p>14 claims might also have been asserted?</p> <p>15 A. Yes, alter ego. I'm sorry I think</p> <p>16 of piercing --</p> <p>17 Q. Sure.</p> <p>18 Did you perform any analysis of</p> <p>19 those claims in connection with forming the</p> <p>20 opinions you expressed in Lipps No. 1?</p> <p>21 A. I did not get down into an</p> <p>22 allocation and an assessment of allocation at</p> <p>23 various entity levels. I was looking at the</p> <p>24 aggregate. I was looking at the aggregate of the</p> <p>25 claims that were being released. But, I mean, I</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 have at different times looked at aiding and</p> <p>3 abetting claims, alter ego, piercing the corporate</p> <p>4 veil.</p> <p>5 Q. As they relate to claims asserted</p> <p>6 by RMBS claimants against ResCap, LLC?</p> <p>7 A. Yes.</p> <p>8 Q. I'm going to come back to that in a</p> <p>9 second. With respect to Lipps No. 1, though, you</p> <p>10 note in footnote No. 3 that the underlying fraud</p> <p>11 claims and misrepresentation claims are beyond the</p> <p>12 scope of your report. Right?</p> <p>13 MR. KERR: Objection.</p> <p>14 A. I don't know that I said they're</p> <p>15 beyond the scope of it. I think I said I could</p> <p>16 look at the riskier claim, the rep and warranty</p> <p>17 claim, at least I think that's the way I described</p> <p>18 it, and support my conclusion with an analysis of</p> <p>19 that.</p> <p>20 Q. Okay. And so did you perform any</p> <p>21 analysis of any tort-based claims in forming the</p> <p>22 opinions expressed in Lipps No. 1?</p> <p>23 A. Beyond what I put in that footnote,</p> <p>24 no.</p> <p>25 Q. And you don't mention aiding or</p>
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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 abetting, piercing the corporate veil or alter ego</p> <p>3 anywhere in Lipps No. 1. Why is that?</p> <p>4 A. For purposes of offering my</p> <p>5 opinion, I didn't need to concern myself with</p> <p>6 allocation between the various entities.</p> <p>7 Q. Why do you say that?</p> <p>8 A. I was more interested in what</p> <p>9 claims were being released and who was being</p> <p>10 released of those claims. And as I understood it</p> <p>11 ResCap, GMAC Mortgage, RFC were receiving releases</p> <p>12 from FGIC of all claims that they could have</p> <p>13 against them and from the trustees on the</p> <p>14 origination-based claims.</p> <p>15 Q. Do you express anywhere in Lipps</p> <p>16 No. 1 your views of the costs for ResCap, LLC, to</p> <p>17 litigate aiding and abetting, piercing the</p> <p>18 corporate veil and alter ego claims?</p> <p>19 A. I did not specifically isolate</p> <p>20 costs associated with litigating those issues.</p> <p>21 Q. And do you express anywhere in</p> <p>22 Lipps No. 1 any risks associated with ResCap, LLC,</p> <p>23 litigating aiding and abetting, piercing the</p> <p>24 corporate veil and alter ego claims?</p> <p>25 A. Yes, I would say I do.</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Q. And where in Lipps No. 1 do you</p> <p>3 express the risks associated with just ResCap,</p> <p>4 LLC, litigating the claims that are asserted</p> <p>5 against it?</p> <p>6 A. I think if you take that in</p> <p>7 isolation, there has to be a foundation for aider</p> <p>8 and abetter, so the litigation associated with</p> <p>9 defending that claim would be -- unless you're</p> <p>10 going to take a lay down on the fraud itself</p> <p>11 because you would go and fight the fraud. And to</p> <p>12 do that, you're basically in the core of what I've</p> <p>13 got in here in terms of fighting on the reps and</p> <p>14 warranties.</p> <p>15 Q. Well, except to the extent that you</p> <p>16 would have defenses that are particularly to a</p> <p>17 fraud litigation, that would not exist with</p> <p>18 respect to a breach of contract claim.</p> <p>19 A. There clearly are additional</p> <p>20 defenses that are associated with a fraud claim</p> <p>21 that may not be present in a rep and warranty</p> <p>22 claim. But as I tried to say earlier, there --</p> <p>23 you know, the rep and warranty claim is based on</p> <p>24 breaches of these loan level reps. And when you</p> <p>25 get into the fraud, they're essentially claiming</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the same thing. You've misrepresented your</p> <p>3 underwriting or you've misrepresented the</p> <p>4 appraisal information. So you're right back into</p> <p>5 the wheelhouse of these rep and warranty claims no</p> <p>6 matter what theory you use.</p> <p>7 Q. And what's your basis for saying</p> <p>8 that aiding and abetting was a claim asserted by</p> <p>9 either ResCap, LLC, by either FGIC or the FGIC</p> <p>10 wrapped trusts?</p> <p>11 A. I think that the proofs of claim</p> <p>12 submitted by the trusts. They never sued, but I</p> <p>13 think the proof of claims have aiding and abetting</p> <p>14 theories in there.</p> <p>15 I know that the FGIC Complaints, I</p> <p>16 believe every one of them, had ResCap in there,</p> <p>17 and they indicate in their allegations that ResCap</p> <p>18 directed the actions of the GMAC and RFC in</p> <p>19 perpetuating the fraud and/or breaches, and the</p> <p>20 proof of claim also has aiding and abetting in</p> <p>21 there, the proof of claim filed by FGIC.</p> <p>22 Q. Let me focus just on the claims</p> <p>23 asserted against ResCap, LLC, and be very</p> <p>24 particular about this.</p> <p>25 Did you do any analysis in forming</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the opinions expressed in Lipps No. 1 as to the</p> <p>3 merits of the claims asserted against ResCap, LLC?</p> <p>4 MR. KERR: Objection.</p> <p>5 MR. SHORE: He can answer it yes or</p> <p>6 no.</p> <p>7 MR. KERR: Are you talking in</p> <p>8 connection with his role as an expert?</p> <p>9 MR. SHORE: Yes.</p> <p>10 A. Just in the expert report, no, I</p> <p>11 did not analyze the ResCap, LLC, claims in</p> <p>12 isolation. I said that I did -- you do have to</p> <p>13 have an underlying fraud or an underlying breach</p> <p>14 that then gives rise to -- or action of control</p> <p>15 that gives rise to these various theories. I</p> <p>16 would have looked at it from that perspective.</p> <p>17 Q. And is it your expert testimony</p> <p>18 that just because somebody asserts a claim that is</p> <p>19 RMBS related with reps and warranties underlying</p> <p>20 it or the wheelhouse, as you called it, that that</p> <p>21 entity should settle under all circumstances?</p> <p>22 A. Should settle under all</p> <p>23 circumstances. No, I would never say that</p> <p>24 somebody should settle under all circumstances.</p> <p>25 Q. Right. In some instances, the</p>
Page 168	Page 169
<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 claims that are asserted are -- have nuisance</p> <p>3 value?</p> <p>4 A. Are you talking specifically RMBS,</p> <p>5 or are you talking in general?</p> <p>6 Q. I'm talking about RMBS in general.</p> <p>7 I think you testified before you've come across</p> <p>8 circumstances in which a settlement is done on a</p> <p>9 nuisance value basis.</p> <p>10 A. In my career, I have seen</p> <p>11 settlements that I would consider to be</p> <p>12 nuisance-based settlements.</p> <p>13 Q. Prior to the petition date, I think</p> <p>14 you testified that you were contemplating moving</p> <p>15 to dismiss certain of the FGIC claims?</p> <p>16 A. That is true.</p> <p>17 Q. Was certain of the claims that you</p> <p>18 were seeking to dismiss were the claims asserted</p> <p>19 against ResCap, LLC?</p> <p>20 A. I believe we did advise Judge</p> <p>21 Crotty in a communication that we were intending</p> <p>22 on filing a motion to dismiss as it related to the</p> <p>23 claims asserted against ResCap, LLC.</p> <p>24 Q. And what was the basis for making</p> <p>25 that motion to dismiss or seeking to make that</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 motion to dismiss?</p> <p>3 A. Based on my assessment of the</p> <p>4 complaint as it was pled and my knowledge of the</p> <p>5 companies at that time.</p> <p>6 Q. What was the rule upon which you</p> <p>7 were going to be basing your motion to dismiss?</p> <p>8 A. What do you mean "a rule"? It</p> <p>9 would be a 12B-6 probably, failure to state a</p> <p>10 cause of action.</p> <p>11 Q. So you had represented to Judge</p> <p>12 Crotty that you believed that ResCap, LLC, had a</p> <p>13 basis to dismiss the FGIC claims because the FGIC</p> <p>14 claims as pleaded in the FGIC Complaint at issue</p> <p>15 failed to state a viable claim against ResCap,</p> <p>16 LLC.</p> <p>17 A. You may have said it more</p> <p>18 eloquently than I did in the letter, but I</p> <p>19 certainly said in the letter that they were not a</p> <p>20 signatory to the underlying contract and I did not</p> <p>21 believe they had pled sufficient facts on those</p> <p>22 Complaints such that we could test the sufficiency</p> <p>23 of those claims against ResCap, LLC.</p> <p>24 Q. And you said based upon your</p> <p>25 knowledge of the companies. Were you aware at</p>

Page 170	Page 171
<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 that time of any facts that would support a claim</p> <p>3 by FGIC that it could bring RMBS-related claims</p> <p>4 directly against ResCap, LLC?</p> <p>5 A. As I recall, prior to FGIC's sued,</p> <p>6 we never had a trustee suit, and the monoline</p> <p>7 claimed suits that we had were MBIA, and they only</p> <p>8 sued the contracting party. In the investor</p> <p>9 cases, obviously, they sued everybody that was</p> <p>10 involved in the securitization, including ResCap.</p> <p>11 So I'm certain in the context of the securities</p> <p>12 case, I would have been looking at the facts. I</p> <p>13 know in some of them we actually did file some</p> <p>14 motions to dismiss -- no, we never filed a motion</p> <p>15 to dismiss ResCap. We filed a motion to dismiss</p> <p>16 Ally.</p> <p>17 However, having said that, I didn't</p> <p>18 need to or hadn't up to that point in time delved</p> <p>19 into the relationship between GMAC Mortgage, RFC</p> <p>20 and ResCap that I now have knowledge of. There's</p> <p>21 two things that I would say about that. One is I</p> <p>22 doubt that in this current environment, based on</p> <p>23 publicly available information, that the Complaint</p> <p>24 against ResCap would be pled the same way and</p> <p>25 would be pled as skinny, as I believe it was at</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the time that FGIC filed its Complaints. And I</p> <p>3 have more knowledge, again, based on these facts</p> <p>4 that I know from public information and involved</p> <p>5 with representing the Debtors, that I'd probably</p> <p>6 have to weigh, in my mind, whether or not it was a</p> <p>7 good tactical decision to make that motion to</p> <p>8 dismiss or rather fight the case to a point where</p> <p>9 maybe you could do a summary judgment motion. I</p> <p>10 think, based on some of the facts, that the</p> <p>11 dynamics have changed from when I sent that letter</p> <p>12 on, whether you can bring claims against ResCap on</p> <p>13 aiding and abetting, alter ego and piercing the</p> <p>14 corporate veil.</p> <p>15 MR. KERR: I don't know whether</p> <p>16 we're at our four hours or not.</p> <p>17 MR. SHORE: I'm getting close. I'm</p> <p>18 on my last page.</p> <p>19 MR. KERR: That's fine. Finish up,</p> <p>20 but let's just kind of --</p> <p>21 Q. Let me see if I understand your</p> <p>22 question. Are you aware of any facts that would</p> <p>23 support a piercing or alter ego claim against</p> <p>24 ResCap, LLC, related to FGIC or FGIC wrapped trust</p> <p>25 that you believe would create a triable issue of</p>
Page 172	Page 173
<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 fact in favor of FGIC or the FGIC wrapped trusts?</p> <p>3 A. I believe there are facts upon</p> <p>4 which one could base those claims.</p> <p>5 Q. I'm just saying that you drew a</p> <p>6 distinction between whether you'd seek to get rid</p> <p>7 of it at a motion to dismiss stage or a summary</p> <p>8 judgment stage?</p> <p>9 A. What's the question?</p> <p>10 Q. Are you saying now that you're</p> <p>11 aware of facts to support a piercing claim between</p> <p>12 GMAC M and ResCap, LLC?</p> <p>13 A. I think the examiner report has</p> <p>14 various discussions in there that an adept pleader</p> <p>15 could utilize to plead a piercing, alter ego,</p> <p>16 aiding and abetting claim against ResCap that</p> <p>17 would cause me to decide not to file a motion to</p> <p>18 dismiss and maybe not even a motion for summary</p> <p>19 judgment. It depends on how it's pled. I am</p> <p>20 aware of a lot more information on the</p> <p>21 relationship between ResCap, GMAC Mortgage and RFC</p> <p>22 than I knew at the time that the FGIC claims were</p> <p>23 first filed.</p> <p>24 Q. Were you ever asked to provide any</p> <p>25 of the Debtors legal advice with respect to</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 whether or not any of the corporate relationships</p> <p>3 between the Debtors could be disregarded?</p> <p>4 MR. KERR: Just yes or no.</p> <p>5 A. Yes.</p> <p>6 Q. When was that?</p> <p>7 MR. KERR: You can answer the</p> <p>8 question when. Let's clarify, Chris.</p> <p>9 Separate from his role as an expert here?</p> <p>10 MR. SHORE: He's testifying to a</p> <p>11 whole bunch of stuff so --</p> <p>12 A. I'm answering questions. None of</p> <p>13 this is in my report, as I told you. I didn't</p> <p>14 need to deal with allocation. I didn't need to</p> <p>15 deal with those piercing issues other than at the</p> <p>16 core fraud or breach of rep.</p> <p>17 MR. KERR: Chris, I just want to</p> <p>18 make sure that we're clear on the record that</p> <p>19 if you're asking about advice he has given the</p> <p>20 Debtors outside -- let me finish -- separate</p> <p>21 from his role as an expert, I want him to be</p> <p>22 aware that that may implicate privileged</p> <p>23 communications.</p> <p>24 Q. In connection with the preparation</p> <p>25 of Lipps No. 1, were you providing legal advice to</p>

Page 174	Page 175
<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 the Debtors?</p> <p>3 A. No.</p> <p>4 Q. So when did you provide legal</p> <p>5 advice to the Debtors with respect to the ability</p> <p>6 of anybody to disregard the corporate relationship</p> <p>7 that's been established between any of the</p> <p>8 Debtors?</p> <p>9 A. I have been involved in discussions</p> <p>10 for months on that. As you certainly know, there</p> <p>11 was an examiner, investigation, and my firm</p> <p>12 together with Morrison and Foerster was involved</p> <p>13 in that interview process, and we had many</p> <p>14 discussions about potential claims that would be</p> <p>15 identified by the examiner, both by and between</p> <p>16 GMAC and RFC and ResCap and then outside into the</p> <p>17 unaffiliated entities.</p> <p>18 Q. And did you provide any written</p> <p>19 memoranda to the companies on that?</p> <p>20 THE WITNESS: Do I answer?</p> <p>21 MR. KERR: You can answer that</p> <p>22 question yes or no.</p> <p>23 A. There may have been.</p> <p>24 Q. What's your reticence in saying</p> <p>25 there is or isn't?</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. Because I can't remember all the</p> <p>3 analyses that we've done over the years or over</p> <p>4 the year, I guess, a little more than a year.</p> <p>5 Q. It seems like years.</p> <p>6 A. Our input and involvement has been</p> <p>7 fairly wide ranging, and I do know that there have</p> <p>8 been discussions related to piercing up to the</p> <p>9 ResCap level, as well as cross-piercing, and I</p> <p>10 would imagine some of that's been reflected in a</p> <p>11 writing.</p> <p>12 Q. And are you aware of any facts to</p> <p>13 support a claim that any of the ResCap Debtors</p> <p>14 committed fraud in connection with any of the</p> <p>15 claims that were asserted by FGIC or the FGIC</p> <p>16 wrapped trusts that are being resolved in</p> <p>17 connection with the Settlement Agreement?</p> <p>18 MR. KERR: You can answer that</p> <p>19 question yes or no. If in answering that</p> <p>20 question -- I just don't want you to reveal</p> <p>21 any privileged communication.</p> <p>22 THE WITNESS: Can you read that</p> <p>23 back?</p> <p>24 (The requested portion of the</p> <p>25 record was read.)</p>
Page 176	Page 177
<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 A. I think there have been fraud</p> <p>3 claims that have been asserted in --</p> <p>4 Q. No. Are you aware of any facts to</p> <p>5 support such a claim?</p> <p>6 A. Well, there have been facts that</p> <p>7 have been alleged, and certainly in the context of</p> <p>8 the MBIA litigation -- they had a fraud claim, and</p> <p>9 they were going after practices and procedures and</p> <p>10 alleging fraud in association with that. I was</p> <p>11 defending, so I didn't necessarily have the same</p> <p>12 perspective on what context for particular facts.</p> <p>13 There clearly has been a case that has been</p> <p>14 advanced by various claimants and was echoed to a</p> <p>15 certain extent -- we were still in the very early</p> <p>16 stages of FGIC, but echoed by FGIC, and I could</p> <p>17 see where they would muster certain facts. And we</p> <p>18 would be responding with either additional facts</p> <p>19 or trying to put context in things that they were</p> <p>20 using out of context.</p> <p>21 Q. So the answer, I guess, is yes you</p> <p>22 were aware of facts that other people have</p> <p>23 mustered that support a claim that one or more of</p> <p>24 the Debtors committed fraud in connection with the</p> <p>25 claims that are being settled in the FGIC</p>	<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 Settlement Agreement?</p> <p>3 MR. KERR: Objection. Asked and</p> <p>4 answered.</p> <p>5 A. I think I have answered that. I</p> <p>6 think you framed the question in a way that I'm</p> <p>7 more comfortable which is it's facts that have</p> <p>8 been alleged. The way you were asking it to me,</p> <p>9 you were asking me to acknowledge that there was</p> <p>10 fraud, and I won't do that.</p> <p>11 Q. In connection with the pre-petition</p> <p>12 FGIC litigation, did you also seek authority to</p> <p>13 dismiss fraud-based claims asserted against the</p> <p>14 ResCap entities?</p> <p>15 A. I don't have those letters</p> <p>16 committed to memory. I know that I had been</p> <p>17 through that battle in the MBIA context, and we</p> <p>18 were a little bit late to the game because Goodwin</p> <p>19 &amp; Proctor had already tested that on a motion to</p> <p>20 dismiss with the Countrywide case. I know we made</p> <p>21 a pass at it in the GMAC Mortgage case, and I was</p> <p>22 unsuccessful.</p> <p>23 So as I sit here today, it may be</p> <p>24 in the letter, but I think that was probably a</p> <p>25 little bit of an arm wrestle and a closer tactical</p>

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<p>1 J. LIPPS - CONFIDENTIAL</p> <p>2 call between my co-counsel and myself. I thought</p> <p>3 that was a difficult motion to make based on what</p> <p>4 the authority was that was out there.</p> <p>5 Q. In expressing your views on the --</p> <p>6 sorry.</p> <p>7 Do you have any personal knowledge</p> <p>8 with respect to how or why ResCap, LLC, agreed to</p> <p>9 a \$337,000,000 claim in favor of FGIC?</p> <p>10 MR. KERR: Objection.</p> <p>11 A. I was not involved in those</p> <p>12 discussions.</p> <p>13 Q. So the answer is you don't have any</p> <p>14 personal knowledge?</p> <p>15 A. I have no personal knowledge.</p> <p>16 MR. SHORE: I have nothing further.</p> <p>17 (Time Ended: 2:19 p.m.)</p> <p>18</p> <p>19 <u>JEFFREY LIPPS</u></p> <p>20</p> <p>21 Subscribed and sworn to</p> <p>22 before me this day</p> <p>23 of , 2013.</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 INDEX:</p> <p>3 WITNESS EXAM BY: PAGE:</p> <p>4 J. Lipps Ms. James 5</p> <p>5 Mr. Carney 52</p> <p>6 Mr. Shore 127</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 Exhibit No. Page:</p> <p>10 Lipps Exhibit 1 Declaration 14</p> <p>11 Lipps Exhibit 2 Order 48</p> <p>12 Lipps Exhibit 3 Motion 61</p> <p>13 Lipps Exhibit 4 Settlement 110</p> <p>14 Lipps Exhibit 5 Order To Show Cause 117</p> <p>15 Lipps Exhibit 6 Document 118</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 180	Page 181
<p>1</p> <p>2 LITIGATION SUPPORT INDEX</p> <p>3</p> <p>4 DIRECTION TO WITNESS NOT TO ANSWER</p> <p>5 Page Line Page Line</p> <p>6 (NONE)</p> <p>7</p> <p>8 REQUEST FOR PRODUCTION OF DOCUMENTS</p> <p>9 Page Line Page Line</p> <p>10 139 5</p> <p>11</p> <p>12 INFORMATION TO BE FURNISHED</p> <p>13 Page Line Page Line</p> <p>14 (NONE)</p> <p>15</p> <p>16 QUESTIONS MARKED FOR A RULING</p> <p>17 Page Line Page Line</p> <p>18 (NONE)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK )</p> <p>4 )ss:</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, JOMANNA DeROSA, a Certified</p> <p>7 Shorthand Reporter and Notary Public within</p> <p>8 and for the States of New York, New Jersey,</p> <p>9 California and Arizona, do hereby certify:</p> <p>10 That JEFFREY LIPPS, the witness</p> <p>11 whose deposition is hereinbefore set forth, was</p> <p>12 duly sworn by me and that such deposition is a</p> <p>13 true record of the testimony given by such</p> <p>14 witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this action</p> <p>17 by blood or marriage, and that I am in no</p> <p>18 way interested in the outcome of this</p> <p>19 matter.</p> <p>20 In witness whereof, I have hereunto</p> <p>21 set my hand this 23rd day of July, 2013.</p> <p>22</p> <p>23</p> <p>24 <u>JOMANNA DeROSA</u></p> <p>25</p>

1  
2 \*\*\*ERRATA SHEET\*\*\*  
3 NAME OF CASE: In re Residential Capital  
4 DATE OF DEPOSITION: 7/23/13  
5 NAME OF WITNESS: J. Lipps  
6 Reason codes:  
7 1. To clarify the record.  
8 2. To conform to the facts.  
9 3. To correct transcription errors.  
10 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
11 From \_\_\_\_\_ to \_\_\_\_\_  
12 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
13 From \_\_\_\_\_ to \_\_\_\_\_  
14 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
15 From \_\_\_\_\_ to \_\_\_\_\_  
16 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
17 From \_\_\_\_\_ to \_\_\_\_\_  
18 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_  
19 From \_\_\_\_\_ to \_\_\_\_\_  
20  
21 \_\_\_\_\_  
22 JEFFREY LIPPS  
23  
24  
25



**Deposition Errata Sheet**

***In re Residential Capital, LLC, et al.,***  
**Case No. 12-12020(MG)**

Deponent: Jeffrey A. Lipps  
Deposition Date: July 23, 2013

Citation	Testimony
11:24	then at or about the time that I <del>gotten</del> <u>got</u> engaged
17:20–21	A. Correct. Under legal uncertainty and <del>expensive</del> <u>expense of</u> resolution.
19:20	So, we had informally <del>stated</del> <u>stayed</u> , with the blessing of
26:8–10	<del>Well,</del> I don't want to disclose any specific advice that I gave the client pre-petition-, <u>but</u> I know we were involved in a number
27:5–7	I transitioned out of at the filing all of my <u>related</u> representations of all the Ally entities that were non-Debtors.
28:13	Corp. <del>∇</del> <u>v.</u> Residential Funding Co. matter was stayed,
29:24	the MBIA Insurance Corp. <del>∇</del> <u>v.</u> GMAC Mortgage Corp.,
30:23–24	mean, the expert phase was <del>under</del> <u>underway in</u> both and <u>in</u> both cases was very similar, and it was going to be a
31:16	for a year or more. <del>A</del> <u>The</u> same structure was set in
37:20	they're right and they hit <u>it</u> . So to that extent,
40:7	adverse outcome in <del>that</del> coming to my opinion that
40:16–17	not <u>an</u> adverse <u>jury verdict</u> . It wasn't a jury verdict; it was a bench trial. It was Judge <del>Ryeroff</del> <u>Rakoff</u> . But you have
42:15–16	was at issue. I don't know what <u>claims</u> ultimately <u>were</u> <del>was</del> at issue. I haven't been able to delve into it <del>in</del> <u>through</u>
42:23–24	Q. Paragraph 138, you refer to MBIA <del>∇</del> <u>v.</u> Flagstar. Do you see that?
45:19	settlement. So <del>their</del> <u>there</u> clearly was and should be,
47:9	Now, <del>Maier</del> <u>Mayer</u> Brown represented the

Citation	Testimony
51:24	about his <u>this</u> motion, the Debtors' motion.
56:8	first Declaration. And Judge <del>Ryeroff</del> <u>Rakoff</u> may have
61:6	to the motion to extend stay, <u>regarding</u> Western Southern,
62:15-16	A. You'll have to ask Judge <del>Glen (phonetic)</del> <u>Glenn</u> that question. I understand it was
73:4	information that <del>they</del> <u>I</u> had available to me. I
74:5-6	securitizations, and there was <del>an analysis of some of the</del> a factual analysis of some of the events that
75:2	<del>particularly</del> <u>recently</u> using a lawyer on the MBIA due
82:17-20	I certainly had some conversations with Judge <del>Code</del> <u>Cote</u> at various times either on telephone conferences or perhaps at one of the proceedings related to the opinions that I had and the burden.
83:12	claims and how that would burden the <del>state</del> <u>estate</u> based
83:21	in the <del>prospectus</del> <u>prospectuses</u> associated with those offerings
88:21	issues that counsel <del>asked</del> <u>asks</u> me to look at as the
96:21	A. How do <del>you</del> <u>I</u> think I'm going to
97:2	will concur with <del>him</del> <u>them</u> . He certainly has, in the
98:3-6	and <del>just</del> <u>address</u> the infancy stage of it without the <u>benefit of</u> appellate rulings on these <u>cases</u> . <del>depending on state law</del> , I mean, there's a whole a lot of things that
98:15	put in my declaration and amplify as <del>they</del> <u>I</u> feel is
98:24	trying to -- you're not reading his <del>opinions</del> <u>answers</u> . You're trying to characterize <u>in</u> the way you've asked and answered that. He's <del>answer</del> <u>answered</u> the question. You want to ask him again, he can keep doing this all day long, but your four hours are being used, Mike. You've asked your question. He <del>answer</del> <u>He's answered</u> your question several times now. This is a waste.
110:2	defense <del>and</del> victory and a complete plaintiff's
112:12	of the securitizations, the FGIC <del>wrap</del> <u>wrapped ones</u> . So, I

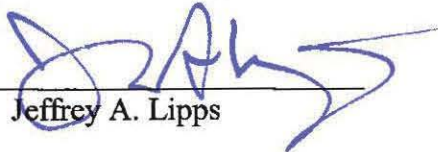
Citation	Testimony
128:10	I remember Alex- Lawrence was
135:14	and things like that over that <u>three or four</u> day period, but,
148:1-3	The amount of the allowed claim does fall within the range of reasonableness and is in the best interest of the <del>state</del> <u>estate</u> to resolve"
149:2-3	Q. Do you know what Section <del>501B</del> <u>510(b)</u> of the bankruptcy code is?
149:5-6	Q. And when were you first advised with respect to <del>Section</del> <u>section</u> <del>501B</del> <u>510(b)</u> is?
149:12-13	Q. And what do you understand Section <del>501B</del> <u>510(b)</u> in the bankruptcy code to address?
152:21	discussions that <del>fall off of</del> <u>follow from</u> that, but I don't
156:4-6	that you have got some of the loans going to <del>ACH-1</del> <u>Ocwen</u> and others, and not always the entire loan file goes there.
158:6	substantial enough that we <del>didn't</del> <u>did</u> need to talk and
159:17-160:2	the <del>estimating</del> <u>estimation</u> proceeding, something that would cause me to <del>ratchet</del> <u>ratchet</u> back my views on the <del>estimating</del> <u>estimation</u> -- or on the costs associated with litigating those claims. So I naturally didn't go backwards and try and see if this would affect that. I saw that the scope of discovery would be <del>sufficient</del> <u>significant</u> , even in a compressed time, and the preparation associated with it, that that cost could be supported -- or my opinion could be supported <del>in</del> <u>by</u> those costs.
165:7-10	isolation, there has to be a foundation for <del>aider</del> <u>aiding</u> and <del>abetter</del> <u>abetting</u> , so the litigation associated with defending that claim would be -- unless you're going to <del>take a</del> lay down on the fraud itself
169:8-10	A. What do you mean "a <u>the</u> rule"? It would be a <del>12B-6</del> <u>12(b)(6)</u> probably, failure to state a cause of action.
170:5-7	A. As I recall, prior to FGIC's <del>sued</del> <u>suits</u> , we never had a trustee suit, and the monoline <del>claimed</del> <u>claims</u> suits that we had were MBIA, and they only
174:11	was an examiner, investigation, and my firm

Citation	Testimony
176:11-20	defending, so I didn't necessarily have the same perspective on <del>what</del> <u>the</u> context for particular facts. There clearly has been a case that has been advanced by various claimants and was echoed to a certain extent -- we were still in the very early stages of FGIC, but echoed by FGIC, and I could see where they would muster certain facts. And we would be responding with either additional facts or trying to put <u>into</u> context <del>in</del> things that they were using out of context.
177:6	think <del>you</del> <u>I</u> framed the question in a way that I'm

Date:

AUGUST 5, 2013

Signed:

  
Jeffrey A. Lipps